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CHAPTER 1

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Part 1

Geophysical Exploration

82-1-101. Persons required to comply. A person, firm, or corporation operating individually or through agents within the state of Montana for the purpose of geophysical exploration in which exploration the seismograph is utilized along with explosives for the determination of geophysical data for any purpose whatsoever, and which person, firm, or corporation either through its own employees or by hiring the services of others operates "seismograph crews", as the term is generally known, shall comply with the following provisions of this part; provided, however, that compliance with the provisions of this part by a seismograph crew or its employer shall constitute compliance herewith by that person, firm, or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

History: **En. Sec. 1, Ch. 235, L. 1955; R.C.M. 1947, 69-3301.**

82-1-102. Doing business within state — resident agent. A person, firm, or corporation shall be deemed to be doing business within the state of Montana when engaged in such geophysical exploration within the boundaries of this state and shall, if not already qualified to do business within this state with a designation of an agent within the state for service of process prior to such time, file with the secretary of state of the state of Montana an authorization, which authorization shall designate a resident agent for the service of process in any action which may be pending in a court in this state, which cause of action may have arisen out of such geophysical exploration.

History: **En. Sec. 2, Ch. 235, L. 1955; R.C.M. 1947, 69-3302.**

82-1-103. Notice of intention to explore. A person, firm, or corporation desiring to engage in geophysical exploration within the state of Montana shall file a notice of intention to engage in the exploration with the county clerk and recorder in each county in which exploration is to be carried on or engaged in. The notice shall be filed prior to the actual commencement of the exploration.

History: **En. Sec. 3, Ch. 235, L. 1955; amd. Sec. 34, Ch. 39, L. 1977; R.C.M. 1947, 69-3303.**

82-1-104. Surety bond — restoration of surface. (1) A person, firm, or corporation desiring to engage in such geophysical exploration shall also file with the secretary of state a good and sufficient surety bond in the amount of $10,000 for a single such geophysical crew or a blanket surety bond in the amount of $25,000 for all such geophysical crews operating within the state for such person, firm, or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such geophysical exploration.

(2) Unless otherwise agreed as between the owner of the surface and such person, firm, or corporation, it shall be the obligation of such person, firm, or corporation upon completion of exploration to plug all "shot holes" in such a manner as shall be specified by the board of oil and gas conservation

to contain any water within its native strata by replacing all drill cuttings and filling the hole with bentonite mud or cement as required to contain the water and capping the same with an impervious material at least 1 foot in depth, the top of which shall be 4 feet below the surface of the land. The portion of the hole above the cap shall be filled with native material. The person, firm, or corporation shall also restore the surface around the same as near as practicable to its original condition.

(3) The bond shall remain on file with the secretary of state so long as the exploration is carried on or engaged in, plus an additional 5 years thereafter; provided, however, that the aggregate liability of the surety shall in no event exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, firm, or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm, or corporation.

History: En. Sec. 4, Ch. 235, L. 1955; amd. Sec. 1, Ch. 175, L. 1961; amd. Sec. 1, Ch. 272, L. 1977; R.C.M. 1947, 69-3304.

82-1-105. Exploration permit. (1) Upon compliance with the provisions herein contained, namely the filing of a notice of intention to engage in the exploration and a certificate (or photostatic copy thereof) from the secretary of state certifying the name and address of the resident agent for service of process for the person, firm, or corporation desiring to engage in the exploration and certifying that the required surety bond has been filed with the secretary of state, the county clerk and recorder shall issue to the person, firm, or corporation a "geophysical exploration permit".

(2) The permit shall show:

(a) the name of the person, firm, or corporation and principal place of business;

(b) if a firm or corporation, the names and addresses of its officers;

(c) the name and address of the resident agent for service of process for the person, firm, or corporation;

(d) that a notice of intention to engage in geophysical exploration has been duly filed; and

(e) that a good and sufficient surety bond has been filed by the person, firm, or corporation, naming the surety company and giving its address.

(3) The permit shall be signed by the county clerk and recorder or his deputy and bear the official county seal. The permit shall be valid and effective for all geophysical crews of the permittee during the calendar year in which it is issued.

(4) The cost of the permit shall be $5 per calendar year or any portion thereof for which issued, and the revenues realized therefrom shall go to the county so issuing. Such funds as are realized shall be applied toward payment of the cost of printing the permits, which shall be printed at the county seat, and excesses shall go into the county's general fund.

(5) If printed forms are not available at the time any person, firm, or corporation desires the permit and qualifies for its issuance, typewritten or other form of reproduction of the permit may be used, the fee of $5 nevertheless shall be paid for its issuance, and this fee shall be disposed of in the same manner.

(6) The permit or a photostatic copy thereof shall be carried by the person or by the agent of the firm or corporation at all times during the period of the geophysical exploration and shall be exhibited upon demand of any county or state official.

History: **En. Sec. 5, Ch. 235, L. 1955; amd. Sec. 35, Ch. 39, L. 1977; R.C.M. 1947, 69-3305.**

82-1-106. County clerk to notify board of issuance of permit — compliance. (1) The county clerk and recorder of the county in which a permit for geophysical activity is issued will immediately forward notice of the issuance of such permit to the board of oil and gas conservation.

(2) The board shall notify the county clerk and recorder of the county if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the state.

(3) If the board of oil and gas conservation determines that a person, firm, or corporation has violated any provisions of this part, the board shall take necessary action to assure compliance.

History: **En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977; R.C.M. 1947, 69-3305.1(1) thru (3).**

82-1-107. Permit holder to furnish information to surface user. Before commencing geophysical activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity, and upon request the following information shall also be furnished:

(1) the name and permanent address of the geophysical exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm's;

(2) evidence of a valid permit to engage in geophysical exploration;

(3) name and address of the company insuring the geophysical firm;

(4) the number of the bond required in 82-1-104;

(5) a description of the surface areas where the planned geophysical activity will take place;

(6) anticipated need, if any, to obtain water from the surface user during planned geophysical activity.

History: **En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977; R.C.M. 1947, 69-3305.1(4).**

82-1-108. Filing record of work performed. (1) Within 3 months from the day any firing of shotpoints in geophysical exploration is done by any person, firm, or corporation within this state, such person, firm, or corporation shall file with the county clerk and recorder of the county in which the work was done a record showing each township and range within the county in which the work was performed and the approximate date on which the work was performed.

(2) Such person, firm, or corporation shall file with the county clerk and recorder a record showing the location of each shotpoint and date fired within a maximum area of any square, 4-section area of land, upon written request of the county clerk and recorder. The request must be based upon the complaint of a property owner that physical damage to his property has resulted from the use of the seismograph and explosives in geophysical operations at some location within the maximum 4-square mile area, and the

request shall designate the name and address of the complaining person and the approximate date and nature of the alleged damages. The required record of operations in response to the request of the county clerk and recorder shall be supplied within 10 days from the date on which the request is received.

History: **En. Sec. 6, Ch. 235, L. 1955; R.C.M. 1947, 69-3306; amd. Sec. 1, Ch. 201, L. 1979.**

82-1-109. Enforcement by county attorneys. It shall be the duty of the several county attorneys to see that the provisions herein contained are complied with and that this law is enforced.

History: **En. Sec. 7, Ch. 235, L. 1955; R.C.M. 1947, 69-3307.**

82-1-110. Penalty. A failure to comply with the terms of this part shall be deemed a misdemeanor and shall be punishable as is elsewhere provided in this code, either by fine or imprisonment, or both. The geophysical permit of any person, firm, or corporation convicted of a violation of the plugging requirements of this part shall be revoked and may not be renewed for a period of 2 years after conviction.

History: **En. Sec. 8, Ch. 235, L. 1955; amd. Sec. 3, Ch. 272, L. 1977; R.C.M. 1947, 69-3308.**

Part 2

Cancellation and Forfeiture of Oil, Gas, or Mineral Leases

82-1-201. Release of record upon forfeiture of lease. When any oil, gas, or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be the duty of the lessee, his successor, or assigns, within 60 days from the date of the forfeiture of any and all leases, to have such lease or abstract of such lease released from record in the county where the leased land is situated without cost to the owner thereof.

History: **En. Sec. 1, Ch. 22, L. 1917; re-en. Sec. 6902, R.C.M. 1921; re-en. Sec. 6902, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1971; R.C.M. 1947, 73-114.**

82-1-202. Action to compel release — procedure without court action. (1) If the lessee or assignee thereof neglects or refuses to execute a release as provided by this part, the owner of the leased premises may sue in any court of competent jurisdiction to obtain the release, and in such action he also may recover from the lessee, his successor, or assigns the sum of $100 as damages, all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and any additional damages that the evidence in the case warrants. Writs of attachment may issue as in other cases. If in the action the plaintiff fails to establish the forfeiture of the lease, an attorney's fee must be allowed to the lessee or assignee of the lease. Issues in regard to attorney's fees shall be determined in the same manner as other issues in such actions.

(2) When, by its terms, an oil or gas lease has expired and is subject to forfeiture for nonperformance and more than 3 years have elapsed since the expiration, the owner of the leased premises, in addition to all other remedies, may serve a written notice on the lessee or on the assignee thereof, which notice shall state:

(a) the names of the lessor, lessee, and assignee thereof if assigned;

(b) the date of the lease and the date of the expiration thereof;

(c) the description of the lands leased;

(d) the place, book, and page where the lease is recorded; and

(e) that if the lessee or assignee fails to execute a release of record of the lease or abstract of the lease, the lease shall be terminated and of no effect and shall cease to be a lien upon the lands described therein, unless the lessee or the assignee thereof, within 60 days from the date of service of the notice, files, in the county clerk's office in the county where the lease or abstract of such lease is recorded, an affidavit stating that the lease is in effect and delivers a copy thereof to the owner of the leased lands.

(3) If the lessee or the assignee thereof resides in the county where the lease or abstract of the lease is recorded, the notice shall be personally served on that person. If the lessee or the assignee thereof does not reside in that county but his address appears on the records in that county clerk's office or is otherwise known, the notice shall be mailed by certified mail to that person at that address, and in addition thereto the notice shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the lands are situated. If the address of the lessee or assignee is unknown, the notice shall be published in the manner provided above. The date of service of the notice, if served personally, the date of mailing, if served by mail, and the first date of publication of the notice, if published, must be at least 60 days before the date of termination referred to in the notice.

(4) Upon the expiration of the time mentioned in the notice, if the affidavit of the lessee or assignee has not been filed as herein provided, the owner of the leased lands shall file an affidavit of service of the notice in the county clerk's office of the county in which the lands are located, and the affidavit shall be kept as a permanent file in his office, and this proof of notice when so filed is prima facie evidence of the sufficiency of the notice, and from the filing thereof the lease is terminated and the lands released from the lien thereof.

History: **En. Sec. 2, Ch. 22, L. 1917; re-en. Sec. 6903, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1929; re-en. Sec. 6903, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1947; amd. Sec. 6, Ch. 218, L. 1971; amd. Sec. 36, Ch. 39, L. 1977; R.C.M. 1947, 73-115.**

82-1-203. Demand for release prior to action. At least 20 days before bringing the action provided for in this part, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease, if such demand by ordinary diligence can be made in this state, that said lease or abstract of such lease be released of record. Such demand must be written. When written, a letterpress or carbon or written copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

History: **En. Sec. 3, Ch. 22, L. 1917; re-en. Sec. 6904, R.C.M. 1921; re-en. Sec. 6904, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1971; R.C.M. 1947, 73-116.**

82-1-204. Joinder of plaintiffs in actions concerning oil and gas leases. (1) In an action for the cancellation of an oil and/or gas lease or leases or quieting title against the claims thereunder, two or more plaintiffs may join in a single action against a common lessee and any one claiming by, through, or under such lessee as an assignee or otherwise. In the complaint in such action the cause or causes of action of each plaintiff shall be set forth separately and there shall be designated the lease or leases or claims or interests sought to be canceled or quieted. It shall be no defense to such an action that the lands of the plaintiffs are noncontiguous or that there is a lack of mutuality of interest between the plaintiffs in the subject of the action or in the relief sought, and the decree in such action shall specify the lease, leases, claims, or interests canceled or quieted.

(2) This procedure shall be in addition to and not in substitution of any existing remedies now allowed by law.

History: **En. Secs. 1, 2, Ch. 135, L. 1939; R.C.M. 1947, 93-2813, 93-2814.**

Part 3

Trusts for Unlocatable Mineral Owners

82-1-301. Definition. The word "person", as used in this part, shall mean any individual, corporation, partnership, joint venture, trust or other entity capable of owning real property in Montana.

History: **En. Sec. 6, Ch. 513, L. 1979.**

82-1-302. Creation of trust for unlocatable mineral, leasehold, or royalty interest owners. (1) Any person who owns an interest in minerals underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of a person or persons also owning or claiming an interest in the minerals underlying the tract if their place of residence and present whereabouts is unknown and cannot reasonably be ascertained.

(2) In requesting the appointment of a trustee, the petitioner must show that:

(a) a diligent but unsuccessful effort to locate the absent owner or claimant has been made; and

(b) appointment of a trustee will be in the best interest of all owners of interest in the minerals.

(3) After determining that the conditions of subsection (2) have been met, the court shall appoint the clerk of court as a trustee and shall authorize him to execute and deliver an oil, gas, or other mineral lease, a ratification, division order, or other related document or instrument on such terms and conditions as the court may approve.

History: **En. Sec. 1, Ch. 513, L. 1979.**

82-1-303. No further liability for petitioner. If a trust in favor of unlocatable owners or claimants of an interest in minerals has been created and all bonuses, rental payments, royalties, and other income due to the absent owners are being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by unlocatable owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust.

History: **En. Sec. 2, Ch. 513, L. 1979.**

82-1-304. Administration of the trust. (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as defined in 72-21-104. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9.

History: En. Sec. 3, Ch. 513, L. 1979.

82-1-305. Existing trust for unlocatable mineral, leasehold, and royalty interest owners — transfer of trustees — penalty. (1) Any bonuses, rental payments, royalties, and other income now held by any person or association for unlocatable owners or claimants of an interest in minerals underlying a tract of land must be deposited with the clerk of the district court in which the tract is located within 6 months after July 1, 1979. An accounting for the funds, any related documents, and any instrument creating a trust must be filed with the funds.

(2) No person may personally hold for longer than 6 months any bonuses, rental payments, royalties, and other income for unlocatable owners or claimants of an interest in minerals, but in such case must petition the district court for creation of a trust as provided in 82-1-302.

(3) If any person fails to comply with subsections (1) or (2), he is liable for all attorney fees and court costs and interest on such funds at twice the current average passbook account rate paid by financial institutions in that district.

History: En. Sec. 4, Ch. 513, L. 1979.

82-1-306. Filing of addresses. Upon the payment of a $5 fee, any person claiming an interest in minerals underlying a tract of land which is the subject of a trust proceeding under 82-1-302 may file with the clerk and recorder of each county wherein the mineral interests lie a notice of his address and the legal description of his interest and thereby establish a rebuttable presumption that such person owns the interest claimed.

History: En. Sec. 5, Ch. 513, L. 1979.

CHAPTER 2

MINING GENERALLY

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Part 1

Location and Record of Claims

82-2-101. Manner of locating claim. Any person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits or a placer deposit of gold or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge, or deposit in the following manner:

(1) He shall post conspicuously at the point of discovery a written or printed notice of location containing the name of the claim, the name of the locator or locators, if there be more than one, the date of the location, which shall be the date of posting such notice, and the approximate dimensions of area of the claim intended to be appropriated.

(2) Within 30 days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds:

(a) a tree at least 8 inches in diameter and blazed on four sides;

(b) a post at least 4 inches square by 4 feet 6 inches in length, set 1 foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock and surrounded in all cases by a mound of earth or stone at least 4 feet in diameter by 2 feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound.

(c) a stone at least 6 inches square by 18 inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least 4 feet in diameter by 2 feet in height; or

(d) a boulder at least 3 feet above the natural surface of the ground on the upper side. Where other monuments or monuments of lesser dimensions than those above described are used, it shall be a question for the jury or for the court where the action is tried without a jury as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

(3) Within 60 days after posting such notice, the locator shall comply with the United States mining laws.

History: En. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R.C.M. 1921; Cal. Civ. C. Sec. 1426; re-en. Sec. 7365, R.C.M. 1935; amd. Sec. 1, Ch. 4, Ex. L. 1971; R.C.M. 1947, 50-701.

82-2-102. Record of certificate of location. (1) Within 60 days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which the mining claim is situated, and within 20 days thereafter, the county clerk shall provide a copy thereof to the department of state lands, Helena, Montana. The record shall consist of a certificate of location for each claim containing:

(a) the name of the lode or claim and whether located as a lode or placer claim;

(b) the name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators;

(c) the date of location and the description of the claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated by projected survey lines, if located in unsurveyed country;

(d) the directions and distances from the discovery point which describe the claim.

(2) The certificate of location must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified or a certified copy thereof is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of location as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the 60-day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in 82-2-112 affects the prima facie presumption created by this section.

History: En. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R.C.M. 1921; re-en. Sec. 7366, R.C.M. 1935; amd. Sec. 2, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 428, L. 1973; R.C.M. 1947, 50-702.

82-2-103. Affidavit of performance of annual work. (1) The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within 90 days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own or an affidavit of the person who performed such work or made the improvements, showing:

(a) the name of the mining claim or claims;

(b) the location of the claim or claims by section, township, and range, by projected survey lines if located in unsurveyed country;

(c) the book and page numbers wherein the original or latest amended relocation for each claim is recorded;

(d) the number of days' work done and the character and value of the improvements placed thereon or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

(e) the dates between which such work or improvements were effected;

(f) at whose instance the work was done or the improvements made;

(g) the actual amount paid for work and improvements and by whom paid when the same was not done by the owner.

(2) Annual assessment work may be performed or caused to be performed at one or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. Said point or points of work may be performed upon a

patented claim. If annual assessment work is performed or caused to be performed at one or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

(3) If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.

(4) An affidavit of performance of annual assessment work must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavit or a certified copy thereof is prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been performed and that the owner of the claim or claims has abandoned and surrendered same.

History: En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R.C.M. 1921; Cal. Civ. C. Sec. 1426m; re-en. Sec. 7368, R.C.M. 1935; amd. Sec. 3, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 312, L. 1973; amd. Sec. 1, Ch. 112, L. 1974; R.C.M. 1947, 50-704.

82-2-104. Millsites. Millsite claims may be located and recorded in the same manner as other claims, except that no discovery or discovery work is required. Where a millsite claim is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe, by appropriate reference, the mining claim to which it is appurtenant.

History: En. Sec. 3, Ch. 16, L. 1907; Sec. 2285, Rev. C. 1907; re-en. Sec. 7369, R.C.M. 1921; re-en. Sec. 7369, R.C.M. 1935; R.C.M. 1947, 50-705.

82-2-105. Relocation of abandoned claim. The relocator of an abandoned or forfeited mining claim may adopt as his discovery any shaft or other working existing upon such claim at the date of the relocation in which the vein, lode, or deposit is disclosed, but in such shaft or other working, he shall perform the same discovery work as is required in the case of an original location.

History: En. Sec. 4, Ch. 16, L. 1907; Sec. 2286, Rev. C. 1907; re-en. Sec. 7370, R.C.M. 1921; re-en. Sec. 7370, R.C.M. 1935; R.C.M. 1947, 50-706.

82-2-106. Rights of relocator. The rights of a relocator of any abandoned or forfeited mining claim hereafter relocated shall date from the posting of his notice of location thereon, and while he is duly performing the acts required by law to perfect his location, his rights shall not be affected by any reentry or resumption of work by the former locator or claimant.

History: En. Sec. 5, Ch. 16, L. 1907; Sec. 2287, Rev. C. 1907; re-en. Sec. 7371, R.C.M. 1921; re-en. Sec. 7371, R.C.M. 1935; R.C.M. 1947, 50-707.

82-2-107. Amended location. A locator or claimant may at any time amend his location and make any change in the boundaries which does not involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate.

History: En. Sec. 6, Ch. 16, L. 1907; Sec. 2288, Rev. C. 1907; re-en. Sec. 7372, R.C.M. 1921; re-en. Sec. 7372, R.C.M. 1935; R.C.M. 1947, 50-708.

82-2-108. Relocation by owner. A locator or claimant may at any time relocate his own claim for any purpose, except to avoid the performance of annual labor thereon, and, by such relocation, may change the boundaries of his claim or the point of discovery, or both, but such relocation must comply in all respects with the requirements of this law as to an original location.

History: En. Sec. 7, Ch. 16, L. 1907; Sec. 2289, Rev. C. 1907; re-en. Sec. 7373, R.C.M. 1921; re-en. Sec. 7373, R.C.M. 1935; R.C.M. 1947, 50-709.

82-2-109. Amendment or relocation not a waiver of acquired rights. Where a locator or claimant amends or relocates his own claim, such amendment or relocation shall not be construed as a waiver of any right or title acquired by him by virtue of the previous location or record thereof, except as to such portions of the previous location as may be omitted from the boundaries of the claim as amended or relocated. As to the portion of ground included both in the original location and the location as amended or relocated, he may rely either upon the original location or the location as amended or relocated or upon both; provided that nothing herein contained shall be construed as permitting the locator or claimant to hold a tract which does not include a valid discovery.

History: En. Sec. 8, Ch. 16, L. 1907; Sec. 2290, Rev. C. 1907; re-en. Sec. 7374, R.C.M. 1921; re-en. Sec. 7374, R.C.M. 1935; R.C.M. 1947, 50-710.

82-2-110. Rights of third persons not affected. No amendment or relocation of a mining claim by the locator or claimant thereof shall interfere with any third person's right existing at the time of such amendment or relocation.

History: En. Sec. 9, Ch. 16, L. 1907; Sec. 2291, Rev. C. 1907; re-en. Sec. 7375, R.C.M. 1921; re-en. Sec. 7375, R.C.M. 1935; R.C.M. 1947, 50-711.

82-2-111. Validating locations already made. All mining locations made and recorded under the laws of this state heretofore in force that in any respect have failed to conform to the requirements of such laws shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this part, be valid if the making and recording of such locations conform to the requirements of this part.

History: En. Sec. 10, Ch. 16, L. 1907; Sec. 2292, Rev. C. 1907; re-en. Sec. 7376, R.C.M. 1921; re-en. Sec. 7376, R.C.M. 1935; R.C.M. 1947, 50-712.

82-2-112. Defective locations good against persons with notice. The period of time prescribed by this law for the performance of any act shall not be deemed mandatory where the act is performed before the rights of third persons have intervened, and no defect in the posted notice or recorded certificate shall be deemed material, except as against one who has located the same ground or some portion thereof in good faith and without notice. Notice to an agent who makes a location in behalf of another shall be deemed notice to his principal, and notice to one of several coclaimants shall be deemed notice to all.

History: En. Sec. 11, Ch. 16, L. 1907; Sec. 2293, Rev. C. 1907; re-en. Sec. 7377, R.C.M. 1921; re-en. Sec. 7377, R.C.M. 1935; R.C.M. 1947, 50-713.

82-2-113. Effect of patent. The issuance of a United States patent for a mining claim is considered conclusive evidence that the requirements of the laws of this state relative to the location and record of such mining claim have been duly complied with. However, if questions of priority are involved, the date of the location shall be an issuable fact when it is claimed to have been prior to the date of the record of the location.

History: En. Sec. 12, Ch. 16, L. 1907; Sec. 2294, Rev. C. 1907; re-en. Sec. 7378, R.C.M. 1921; re-en. Sec. 7378, R.C.M. 1935; amd. Sec. 10, Ch. 39, L. 1977; R.C.M. 1947, 50-714.

82-2-114. Amended locations. If, at any time, the locator of any mining claim heretofore or hereafter located or his successors or assigns shall apprehend that his original declaratory statement was defective or erroneous or that the requirements of law had not been complied with or shall be desirous of changing his boundaries or taking in any part of an overlapping claim which has been abandoned or in case his original declaratory statement was filed prior to the passage of this law and he shall be desirous of securing the benefit of this part, such locator or his successors or assigns may file an additional or amended declaratory statement subject to the provisions of this part; provided that such relocation or filing of the amended or additional declaratory statement shall not interfere with the existing rights of others at the time of such relocation or filing of the amended or additional declaratory statement, and no such relocation or amended or additional declaratory statement or other record thereof shall preclude the claimant or claimants from proving any such title as he or they may have held under the previous location and notice thereof.

History: En. Sec. 1, p. 56, L. 1901; re-en. Sec. 2295, Rev. C. 1907; re-en. Sec. 7379, R.C.M. 1921; Cal. Civ. C. Sec. 1426h; re-en. Sec. 7379, R.C.M. 1935; R.C.M. 1947, 50-715.

82-2-115. Filing of false mining claims. Every person who shall offer any location certificate for a placer mining claim or lode claim or affidavit of assessment work to be filed in an office of a county clerk of this state on behalf of himself or for any other person or any person who shall procure others to do so, knowing that such claim or certificate or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state, shall be punished by imprisonment in the state penitentiary for not more than 5 years or by a fine of not more than $5,000 or by both.

History: En. Sec. 1, Ch. 135, L. 1973; R.C.M. 1947, 50-702.1.

Part 2

Rights-of-Way and Eminent Domain

82-2-201. Right-of-way of owners of mines. The owner of a mining claim held under the laws of the United States by patent or otherwise or under the local laws and customs of the state has a right-of-way over and across the land or mining claim of another, patented or otherwise, as prescribed in this part.

History: En. Sec. 1, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 886, 5th Div. Rev. Stat. 1879; re-en. Sec. 1495, Comp. Stat. 1887; amd. and re-en. Sec. 3630, Pol. C. 1895; re-en. Sec. 2297, Rev. C. 1907; re-en. Sec. 7382, R.C.M. 1921; re-en. Sec. 7382, R.C.M. 1935; R.C.M. 1947, 50-801.

82-2-202. Road or ditch right-of-way. Whenever a mine or mining claim is so situated that it cannot be conveniently worked without a road thereto or a ditch to convey water thereto or a ditch or a cut to convey the water therefrom or without a flume to carry water and tailings therefrom or without a shaft or tunnel thereto, which road, ditch, cut, flume, or tunnel must necessarily pass over, under, through, or across any lands or mining claims owned or occupied by another, such owner is entitled to a right-of-way for said road, ditch, cut, flume, shaft, or tunnel over, under, through, and across the lands or mining claims belonging to another, upon compliance with the provisions of this part.

History: En. Sec. 2, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 887, 5th Div. Rev. Stat. 1879; re-en. Sec. 1496, Comp. Stat. 1887; amd. and re-en. Sec. 3631, Pol. C. 1895; re-en. Sec. 2298, Rev. C. 1907; re-en. Sec. 7383, R.C.M. 1921; re-en. Sec. 7383, R.C.M. 1935; R.C.M. 1947, 50-802.

82-2-203. Proceedings to obtain right-of-way. Whenever such owner desires to work a mine or mining claim and it is necessary to enable him to do so successfully and conveniently that he should have a right-of-way for any of the purposes mentioned in the foregoing sections and if such right-of-way has not been acquired by agreement between him and the owner of the land or claims over, under, across, and upon which he seeks to establish such right-of-way, it is lawful for him to present to the judge of the district court a complaint asking that such right-of-way be awarded to him. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the lands to be affected by such right-of-way, with the names of the occupants or owners thereof, and may also set forth any tender or offer hereinafter mentioned.

History: En. Sec. 3, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 888, 5th Div. Rev. Stat. 1879; re-en. Sec. 1497, Comp. Stat. 1887; amd. and re-en. Sec. 3632, Pol. C. 1895; re-en. Sec. 2299, Rev. C. 1907; re-en. Sec. 7384, R.C.M. 1921; re-en. Sec. 7384, R.C.M. 1935; R.C.M. 1947, 50-803.

82-2-204. Proceedings before the court. Upon the receipt of the complaint and filing thereof with the clerk of the court, the judge must direct a summons to issue to the defendants named in the complaint requiring them to appear before the judge on a day therein named, which must be not less than 10 days from the service thereof, and show cause why such right-of-way should not be allowed. The summons may be served on each of the parties in the manner prescribed by law for serving summons in other actions.

History: En. Sec. 4, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 889, 5th Div. Rev. Stat. 1879; re-en. Sec. 1498, Comp. Stat. 1887; amd. and re-en. Sec. 3633, Pol. C. 1895; re-en. Sec. 2300, Rev. C. 1907; re-en. Sec. 7385, R.C.M. 1921; re-en. Sec. 7385, R.C.M. 1935; R.C.M. 1947, 50-804.

82-2-205. Court order and appointment of commissioners. Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, and issue must be joined, and the judge must hear the allegations and proofs of the respective parties. If, upon such hearing, the judge is satisfied that the claims of the plaintiff can be worked conveniently only by means of the privilege asked for, he must make an order adjudging and awarding to the plaintiff such right-of-way and must appoint three commissioners who are disinterested persons and residents of the county to assess the damages to the lands or claims affected by such order.

History: En. Sec. 5, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 890, 5th Div. Rev. Stat. 1879; re-en. Sec. 1499, Comp. Stat. 1887; amd. and re-en. Sec. 3634, Pol. C. 1895; re-en. Sec. 2301, Rev. C. 1907; re-en. Sec. 7386, R.C.M. 1921; re-en. Sec. 7386, R.C.M. 1935; amd. Sec. 11, Ch. 39, L. 1977; R.C.M. 1947, 50-805.

82-2-206. Commissioners to assess damages. The commissioners must be sworn to faithfully and impartially discharge their duties and must without delay examine the property, lands, and claims and assess the damages resulting from such right-of-way and report the amount to the judge, and if such right-of-way affects the property of more than one person, such report must contain an assessment of damages to each person.

History: En. Sec. 6, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 891, 5th Div. Rev. Stat. 1879; re-en. Sec. 1500, Comp. Stat. 1887; amd. and re-en. Sec. 3635, Pol. C. 1895; re-en. Sec. 2302, Rev. C. 1907; re-en. Sec. 7387, R.C.M. 1921; re-en. Sec. 7387, R.C.M. 1935; R.C.M. 1947, 50-806.

82-2-207. Power to set aside commissioners' report. For good cause shown, the judge may set aside the report of the commissioners and appoint three other commissioners.

History: En. Sec. 7, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 892, 5th Div. Rev. Stat. 1879; re-en. Sec. 1501, Comp. Stat. 1887; amd. and re-en. Sec. 3636, Pol. C. 1895; re-en. Sec. 2303, Rev. C. 1907; re-en. Sec. 7388, R.C.M. 1921; re-en. Sec. 7388, R.C.M. 1935; R.C.M. 1947, 50-807.

82-2-208. Right-of-way to commence upon payment of assessed damages. Upon the payment of the sum assessed as damages and all costs to the persons to whom it is awarded or the payment of the same to the clerk for the use of such person, plaintiff is entitled to the right-of-way and may immediately proceed to occupy the same and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right-of-way so awarded.

History: En. Sec. 8, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 893, 5th Div. Rev. Stat. 1879; re-en. Sec. 1502, Comp. Stat. 1887; amd. and re-en. Sec. 3637, Pol. C. 1895; re-en. Sec. 2304, Rev. C. 1907; re-en. Sec. 7389, R.C.M. 1921; re-en. Sec. 7389, R.C.M. 1935; R.C.M. 1947, 50-808.

82-2-209. Appeal from assessment of damages. An appeal from the assessment of damages made by the commissioners may be taken to the district court by any party interested at any time within 10 days after the filing of the report of the commissioners. A written notice of appeal must be filed with the clerk and served upon the opposite party.

History: En. Sec. 9, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 894, 5th Div. Rev. Stat. 1879; re-en. Sec. 1503, Comp. Stat. 1887; amd. and re-en. Sec. 3638, Pol. C. 1895; re-en. Sec. 2305, Rev. C. 1907; re-en. Sec. 7390, R.C.M. 1921; re-en. Sec. 7390, R.C.M. 1935; R.C.M. 1947, 50-809.

82-2-210. Trial on appeal and costs. On appeal, the question of the amount of damages may be tried by the court or jury as in other cases. If the appellant recovers damages exceeding the amount awarded by the commissioners, the opposite party must pay the costs of appeal, otherwise the appellant.

History: En. Sec. 10, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 895, 5th Div. Rev. Stat. 1879; re-en. Sec. 1504, Comp. Stat. 1887; amd. and re-en. Sec. 3639, Pol. C. 1895; re-en. Sec. 2306, Rev. C. 1907; re-en. Sec. 7391, R.C.M. 1921; re-en. Sec. 7391, R.C.M. 1935; R.C.M. 1947, 50-810.

82-2-211. Payment of costs. All costs and expenses of the proceedings under the provisions of this part, except as provided in 82-2-210, must be paid by the plaintiff or party making the application. The judge may, if the right-of-way asked for is denied, allow the opposite party a reasonable counsel fee.

History: En. Sec. 3640, Pol. C. 1895; re-en. Sec. 2307, Rev. C. 1907; re-en. Sec. 7392, R.C.M. 1921; re-en. Sec. 7392, R.C.M. 1935; R.C.M. 1947, 50-811.

82-2-212. Appeal to supreme court. An appeal to the supreme court may be taken by either party as in other cases.

History: En. Sec. 3641, Pol. C. 1895; re-en. Sec. 2308, Rev. C. 1907; re-en. Sec. 7393, R.C.M. 1921; re-en. Sec. 7393, R.C.M. 1935; R.C.M. 1947, 50-812.

82-2-213 through 82-2-220 reserved.

82-2-221. Eminent domain for open-pit mining — purchase of property required. Whenever the right of eminent domain is exercised to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount asked for such property within 30 days from the entry of the court order appointing commissioners in said eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid for such property in the manner prescribed in Title 70, chapters 30 and 31, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain.

History: En. Sec. 1, Ch. 240, L. 1961; amd. Sec. 1, Ch. 304, L. 1973; R.C.M. 1947, 50-813.

82-2-222. Construction of alternate facilities. Whenever it is sought to condemn streets, roads, alleys, or highways for the purposes stated in 82-2-221 hereof, there shall also be attached to the complaint for condemnation a plat or plats showing the alternate facilities to be proposed and paid for by the plaintiff, and the court, in its final order of condemnation, may order the plaintiff to construct such reasonable and adequate alternate facilities as it deems appropriate under the circumstances.

History: En. Sec. 2, Ch. 240, L. 1961; R.C.M. 1947, 50-814.

82-2-223. Compensation for property. (1) The measure of compensation for the property located within 300 yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open-pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open-pit mining operations.

History: En. Sec. 3, Ch. 240, L. 1961; amd. Sec. 2, Ch. 304, L. 1973; R.C.M. 1947, 50-815.

82-2-224. Notice of condemnation — filing of plat. Any party seeking to condemn property for open-pit mining purposes shall serve notice in writing on all owners of property within 300 yards of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided.

History: En. Sec. 4, Ch. 240, L. 1961; amd. Sec. 3, Ch. 304, L. 1973; R.C.M. 1947, 50-816.

Part 3

Landowner Notification of Surface Operations

82-2-301. Short title. This part may be referred to as "The Landowner Notification Act".

History: En. Sec. 1, Ch. 335, L. 1971; R.C.M. 1947, 50-1301.

82-2-302. Ascertaining ownership of land. All prospectors for minerals, miners, or other persons contemplating surface disturbance by mechanical equipment other than hand tools on lands within the state of Montana are required to ascertain the ownership and possessory right of any land before performing any such operations causing surface disturbance such as road or trail building or any other work disturbing the surface on such land.

History: En. Sec. 2, Ch. 335, L. 1971; R.C.M. 1947, 50-1302.

82-2-303. Written notice and approval required before commencement of operations. (1) The land or surface of land not owned in fee by such person may not be disturbed in any manner until the owner or manager of the surface of said land and the owner of a possessory right to said land are given notice in writing, accompanied by a map showing the specific locations involved, of such person's intent or desire to enter upon such land, which will sufficiently disclose the plan of work and operations, including contemplated measures for the protection and restoration of the land and waters, to enable the owner or manager of the land and any person holding a possessory right to such land to evaluate the extent of disturbance contemplated and the effectiveness and sufficiency of the protection and restoration measures planned.

(2) Before commencement of any work or operations on any such lands, such person must first obtain from the surface owner of private land specific written approval of the proposed work or operations.

(3) In the case of city, county, state, or federally-owned lands, such person must first obtain the authorization or permit, if any, required by the

applicable law and the regulations of the governmental agency or board charged by law with the administration or management of the surface of such land.

History: **En. Sec. 3, Ch. 335, L. 1971; R.C.M. 1947, 50-1303.**

82-2-304. Exemption — discovery pits on federal lands. Discovery pits which may be required to locate a mining claim on federal lands open to mineral entry, when excavated entirely by hand methods with hand tools, are exempt from the operation of this part.

History: **En. Sec. 4, Ch. 335, L. 1971; R.C.M. 1947, 50-1304.**

82-2-305. Exemption — operations pursuant to prospecting permits or other agreements. The provisions of this part shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect.

History: **En. Sec. 5, Ch. 335, L. 1971; amd. Sec. 1, Ch. 194, L. 1973; R.C.M. 1947, 50-1305.**

82-2-306. Violation — immunity of landowner. Any work done in violation of this part is punishable as a misdemeanor, and each day of violation shall constitute a separate offense. The owner or lessor shall not be liable for injury to any person on either owned or leased land.

History: **En. Sec. 6, Ch. 335, L. 1971; R.C.M. 1947, 50-1306.**

Part 4

Assaying of Ore and Payment for Consignments

82-2-401. Samplerooms required. Any person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal shall maintain a sampling-room or house to which the ore shippers, their agents, or representatives shall have access at all times during the sampling of ores or while the same is being carried on and in which shall be samples of all ores he or they may buy or smelt.

History: **En. Sec. 1, Ch. 54, L. 1909; re-en. Sec. 3436, R.C.M. 1921; re-en. Sec. 3436, R.C.M. 1935; R.C.M. 1947, 50-201.**

82-2-402. Samples of fifty pounds per ton to be retained until settlement. A person, association, or corporation which buys any ores upon an agreement to pay for them in amount dependent upon their metallic contents or smelts any ore shall retain from the pulp or crushed ore, as the same is sampled, a quantity of not less than 50 pounds out of each ton of ore, which quantity shall be selected regularly and at equal intervals from any lot of ore so bought or to be smelted, and shall keep this quantity separate from any other ores or pulp for a period of 30 days or until full settlement is made and accepted by the shipper. Until full settlement is made and accepted, the ore shipper, his agents, or representatives may take from the quantity so retained any part thereof for the purpose of sampling or assaying that part;

however, the value of any part so taken by the owner or shipper may be deducted from the total value of the ore delivered by him.

History: En. Sec. 2, Ch. 54, L. 1909; re-en. Sec. 3437, R.C.M. 1921; re-en. Sec. 3437, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1977; R.C.M. 1947, 50-202.

82-2-403. Penalty for commingling foreign substances with ore. Any person or persons, corporation, association, or partnership which shall, with intent to defraud, in any manner whatever, introduce any foreign substance into any ore or commingle any foreign substance with any ore intended for sale in any smelter or which any person, association, or corporation shall have undertaken for hire to smelt or into any sample retained for tests or assays, as provided in 82-2-402, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $1,000 or by imprisonment in the county jail for a period of not less than 60 days or more than 12 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 54, L. 1909; amd. Sec. 1, Ch. 44, L. 1921; re-en. Sec. 3438, R.C.M. 1921; re-en. Sec. 3438, R.C.M. 1935; R.C.M. 1947, 50-203.

82-2-404. Umpire assayers — appointment, qualifications, and duties. A person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt them, whether for themselves or as the agent or agents for other purchasers, shall choose an assayer who has operated an assay office or chemical laboratory for at least 1 year. The person, association, or corporation shall submit to the selected assayer all samples of ore over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of the ore. The chosen assayer shall be known as the umpire for the person, association, or corporation.

History: En. Sec. 1, Ch. 115, L. 1909; re-en. Sec. 3439, R.C.M. 1921; re-en. Sec. 3439, R.C.M. 1935; amd. Sec. 2, Ch. 39, L. 1977; R.C.M. 1947, 50-204; amd. Sec. 1, Ch. 27, L. 1979.

82-2-405. Notice of selection. Upon the selection of the umpire, who shall be actively engaged in the assaying business in this state, the person, association, or corporation selecting him shall, within 10 days after the selection is made, post a notice of the selection in a conspicuous place within and without the room or house where the sampling of ores is carried on by the person, association, or corporation.

History: En. Sec. 2, Ch. 115, L. 1909; re-en. Sec. 3440, R.C.M. 1921; re-en. Sec. 3440, R.C.M. 1935; amd. Sec. 3, Ch. 39, L. 1977; R.C.M. 1947, 50-205.

82-2-406. Violation — penalty. Every person, association, or corporation engaged in the sampling of ores belonging to others which fails to comply with the provisions of 82-2-404 or 82-2-405 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or less than $500.

History: En. Sec. 3, Ch. 115, L. 1909; re-en. Sec. 3441, R.C.M. 1921; re-en. Sec. 3441, R.C.M. 1935; R.C.M. 1947, 50-206.

82-2-407 through 82-2-420 reserved.

82-2-421. Time for payment for ores. (1) Every person, association, company, or corporation engaged within this state in purchasing ores, minerals, or metals from or in smelting, milling, or otherwise reducing or preparing the same for market for any other person or persons, association, company, or corporation shall, within 20 days after any such ores, minerals, or metals shall have arrived at his, their, or its smelter, mill, reduction works, yards, or other place for receiving such ores, minerals, or metals, make full settlement with and payment of the amount due to the consignor or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction.

(2) However, the provisions of this section shall not be applicable to any such ores, minerals, or metals received pursuant to an existing written contract at time of shipment between the consignor or consignors thereof and the person, association, company, or corporation receiving the same, where the time for settlement and payment is provided for in such contract.

History: **En. Sec. 1, Ch. 37, L. 1911; re-en. Sec. 3442, R.C.M. 1921; re-en. Sec. 3442, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1953; R.C.M. 1947, 50-301(part).**

82-2-422. Violation — penalty. Any person, association, company, or corporation violating any of the provisions of 82-2-421 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or less than $500.

History: **En. Sec. 2, Ch. 37, L. 1911; re-en. Sec. 3443, R.C.M. 1921; re-en. Sec. 3443, R.C.M. 1935; R.C.M. 1947, 50-302.**

82-2-423. Statement by purchasers of ore from leased mines. A person or corporation buying or treating ores from leased mines or mining claims shall furnish the lessor and the lessee of the mines or mining claims a true and correct copy of the statement of returns of ores from the sale or shipment. The statement shall show both the gross and net proceeds derived from the sale or shipment of ores. Upon shipment of the ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating them the names and post-office addresses of the lessor and the lessee interested in that shipment of ores, and within 7 days after receipt of the statement from the sampling works or smelter, the shipper shall make settlement with the lessor and the lessee for the shipment or sale of ores, based upon the statement received by the parties from the sampling works or smelter.

History: **En. Sec. 1, Ch. 79, L. 1921; re-en. Sec. 3444, R.C.M. 1921; re-en. Sec. 3444, R.C.M. 1935; amd. Sec. 4, Ch. 39, L. 1977; R.C.M. 1947, 50-303.**

82-2-424. Copy of statement to lessee. Sampling works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought from or treated for lessors of mines to the lessee of the mine or mining claim from which the ores were extracted at the same time the statement is furnished to the lessor of the mine or mining claim or shipper of the ore.

History: **En. 3444.1, R.C.M. 1935 by Sec. 1, Ch. 17, L. 1937; amd. Sec. 5, Ch. 39, L. 1977; R.C.M. 1947, 50-304.**

82-2-425. Shipper — penalty for violation. A person or corporation who, as the shipper, violates 82-2-423, as amended, is liable to the lessor and the lessee for 10% of the net returns from the shipment or sale of ores referred to in that section, in addition to the value of the interest of the lessor and the lessee in the shipment. This amount may be recovered in an action in any court of competent jurisdiction.

History: **En. Sec. 2, Ch. 79, L. 1921; re-en. Sec. 3445, R.C.M. 1921; re-en. Sec. 3445, R.C.M. 1935; amd. Sec. 6, Ch. 39, L. 1977; R.C.M. 1947, 50-305.**

82-2-426. Smelters — penalty for violation. Any person or corporation operating any sampling works or smelter within this state who shall violate any of the provisions of 82-2-423 and 82-2-424 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not less than $50 or more than $100.

History: **En. Sec. 3, Ch. 79, L. 1921; re-en. Sec. 3446, R.C.M. 1921; re-en. Sec. 3446, R.C.M. 1935; amd. Sec. 2, Ch. 17, L. 1937; R.C.M. 1947, 50-306.**

CHAPTER 3

COAL MINING

Part 1 — Coal Conservation

Section

82-3-101. Short title.
82-3-102. Policy and purpose.
82-3-103. Definitions.
82-3-104. Approved strip-mining plan required — effective period.
82-3-105. Review of strip-mining plan.
82-3-106. Appeal on disapproval of plan.
82-3-107. Rules.
82-3-108. Procedure for hearings and appeals.
82-3-109. Penalties.
82-3-110. Deposit of fines.

Part 2 — Coal Invoices

82-3-201. Regulations on bills and invoices.
82-3-202. Dealers' duties concerning bills and invoices.
82-3-203. Copies of bills and invoices to be kept for inspection.
82-3-204. Enforcement.
82-3-205. Penalty.

Part 1

Coal Conservation

82-3-101. *(Temporary)* **Short title.** This part shall be known and may be cited as "The Strip-Mined Coal Conservation Act". **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: **En. Sec. 1, Ch. 220, L. 1973; R.C.M. 1947, 50-1401.**

82-3-102. *(Temporary)* **Policy and purpose.** (1) Recognizing the importance of natural resources to the welfare of present and future generations of the people of Montana, it is declared to be the public policy in providing for the orderly development of coal resources through strip mining to assure the wise use and to prevent the waste of coal.

(2) It is the purpose of this part:

(a) to vest in the department the authority to review strip-mining plans and either approve or disapprove such plans for the purpose of preventing waste; and

(b) to vest in the board the authority to adopt rules to prohibit waste resulting from strip-mining operations. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 2, Ch. 220, L. 1973; R.C.M. 1947, 50-1402.

82-3-103. *(Temporary)* **Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the state board of land commissioners.

(2) "Department" means the department of state lands.

(3) "Marketable coal" means strippable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(4) "Operation" means any person engaged in strip mining who removes more than 10,000 cubic yards of coal or overburden.

(5) "Operator" means a person that conducts an operation.

(6) "Overburden" means all of the earth and other materials which lie above a natural coal deposit and also means such earth and other material after removal from their natural state in the process of strip mining.

(7) "Person" means a person, partnership, corporation, association, or other legal entity.

(8) "Strip mining" means all or any part of the process followed in the production of coal by the opencut method including mining by the auger method or any similar method which penetrates a coal deposit and removes coal directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the coal.

(9) "Strip-mining plan" means the planned course of conduct of a strip-mining operation to include plans for the removal and utilization of strippable and marketable coal located within the area planned to be mined.

(10) "Strippable coal" means that coal which can be removed through strip-mining methods adaptable to the location that coal is being strip mined or is planned to be strip mined.

(11) "Waste" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of strippable and marketable coal in accordance with reclamation standards established by the department shall not be considered waste. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 3, Ch. 220, L. 1973; R.C.M. 1947, 50-1403.

82-3-104. *(Temporary)* **Approved strip-mining plan required — effective period.** (1) No operator may engage in strip mining without first obtaining approval of a strip-mining plan from the department as provided for in 82-3-105, as amended.

(2) Approved strip-mining plans shall be effective for 5 years from the date the plan is approved, with annual reports to the department, as prescribed in 82-4-237, in which the operator indicates whether any waste has

occurred in the past year or is expected to occur in the forthcoming year. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 4, Ch. 220, L. 1973; amd. Sec. 15, Ch. 39, L. 1977; amd. Sec. 4, Ch. 352, L. 1977; R.C.M. 1947, 50-1404.

82-3-105. *(Temporary)* **Review of strip-mining plan.** (1) Upon submission of a strip-mining plan to the department, the department shall review the plan for the purpose of determining whether waste will occur. The department may require an operator to submit any information it deems necessary for review of the strip-mining plan to determine whether waste will occur and may make inspections and investigations it deems necessary for the review. The department shall either approve or disapprove a strip-mining plan within 6 months of its receipt from the operator. In the event a strip-mining plan is disapproved, the department shall recommend the means to bring the plan into conformance with this part. Any strip-mining plan not approved or disapproved by the department within 6 months of its receipt will be deemed approved for the purposes of this part.

(2) The department shall adopt procedures for the submission of strip-mining plans and prescribe the format for the preparation of strip-mining plans.

(3) Upon request by the operator for good cause shown, the department may modify the terms and conditions of an approved strip-mining plan at any time during the course of an operation. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 5, Ch. 220, L. 1973; R.C.M. 1947, 50-1405.

82-3-106. *(Temporary)* **Appeal on disapproval of plan.** If a strip-mining plan is disapproved, the operator or his authorized representative may appeal to the board. Within 30 days of receiving a request for a hearing, the board must hold a hearing. For good cause shown, the hearing may be held not more than 60 days after receipt of the request by the board. The decision of the department with regard to the strip-mining plan shall remain in effect not more than 5 working days after the hearing unless the decision is sooner affirmed, modified, or revoked by the board. The board may require an operator to submit any information it deems necessary for the hearing and may make inspections and investigations it deems necessary for the hearing. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 6, Ch. 220, L. 1973; R.C.M. 1947, 50-1406(1).

82-3-107. *(Temporary)* **Rules.** The board may adopt rules to prevent the waste of coal resulting from strip-mining operations and to otherwise effectuate the purposes and intent of this part. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 6, Ch. 220, L. 1973; R.C.M. 1947, 50-1406(2).

82-3-108. *(Temporary)* **Procedure for hearings and appeals.** All hearings and appeal procedures shall be in accordance with parts 6 and 7 of chapter 4, Title 2. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 8, Ch. 220, L. 1973; R.C.M. 1947, 50-1408.

82-3-109. *(Temporary)* **Penalties.** (1) Any operator who engages in an operation without an approved strip-mining plan as provided for in this part shall be liable to a civil penalty of not less than $100 or more than $1,000 and an additional civil penalty of not less than $100 or more than $1,000 for each day during which the violation continues. Such penalties shall be recoverable in an action brought in the name of the state by the attorney general in the first judicial district of the state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) Any operator that fails to comply with the terms of an approved strip-mining plan shall be liable to a civil penalty of not less than $1,000 or more than $10,000. Upon conviction the court may revoke the strip-mining plan. In the event of revocation of the strip-mining plan, the operator must proceed as provided for in 82-3-105. The penalties provided for in subsection (1) of this section shall apply to revoked strip-mining plans.

(3) Any person or operator who violates a rule adopted by the board pursuant to this part is guilty of a misdemeanor. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: **En. Sec. 7, Ch. 220, L. 1973; R.C.M. 1947, 50-1407.**

82-3-110. *(Temporary)* **Deposit of fines.** All fines collected under the provisions of this part shall be deposited in the general fund. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: **En. Sec. 10, Ch. 220, L. 1973; R.C.M. 1947, 50-1409.**

Part 2

Coal Invoices

82-3-201. Regulations on bills and invoices. Any person, firm, or corporation engaged in mining, producing, or shipping of coal within the state of Montana shall accurately bill and invoice the same, plainly indicating on all bills or invoices therefor the place where the same was mined, the person, firm, or corporation by whom the same was mined, and the trade name or mark, if any, thereof.

History: **En. Sec. 1, Ch. 104, L. 1927; re-en. Sec. 3546.1, R.C.M. 1935; R.C.M. 1947, 50-601.**

82-3-202. Dealers' duties concerning bills and invoices. Any person, firm, or corporation wholesaling, jobbing, exchanging, offering for sale, or selling at retail any coal within the state of Montana shall accurately bill and invoice the same to the person, firm, or corporation purchasing or receiving the same and shall plainly indicate on all statements, bills, or invoices therefor the name of the coal, the name of the person, firm, or corporation producing the same, the place where mined, and the trade name or trademark, if any, thereof.

History: **En. Sec. 2, Ch. 104, L. 1927; re-en. Sec. 3546.2, R.C.M. 1935; R.C.M. 1947, 50-602.**

82-3-203. Copies of bills and invoices to be kept for inspection. A person, firm, or corporation mining, shipping, or producing coal and all persons, firms, or corporations wholesaling, jobbing, exchanging, offering for sale, or selling at retail any coal in this state shall keep a true, accurate, and complete copy of all the original statements, bills, and invoices of all coal produced, shipped, marketed, exchanged, or sold for at least 1 year. All papers, records, and files of any person, firm, or corporation transporting, producing, shipping, exchanging, or selling any coal in this state shall, at all times, be open to inspection by the attorney general, the county attorneys, and the department of business regulation for the purposes of enforcing this part.

History: En. Sec. 4, Ch. 104, L. 1927; re-en. Sec. 3546.4, R.C.M. 1935; amd. Sec. 117, Ch. 431, L. 1975; R.C.M. 1947, 50-604.

82-3-204. Enforcement. The department of business regulation shall enforce this part, and the attorney general and the county attorneys shall prosecute all cases arising under its provisions.

History: En. Sec. 6, Ch. 104, L. 1927; re-en. Sec. 3546.6, R.C.M. 1935; amd. Sec. 118, Ch. 431, L. 1975; R.C.M. 1947, 50-606.

82-3-205. Penalty. Every person, firm, or corporation violating any of the provisions of this part shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 or by imprisonment in the county jail for not more than 90 days or by both such fine and imprisonment. Any person, firm, or corporation convicted of a second violation of any of the provisions of this part shall be punished as above provided, and the license of any retail coal dealer shall, thereby, be automatically revoked, and it shall be unlawful for any person, firm, or corporation so convicted to engage thereafter in said retail business, either directly or indirectly, for a period of 6 months next after such second conviction.

History: En. Sec. 5, Ch. 104, L. 1927; re-en. Sec. 3546.5, R.C.M. 1935; R.C.M. 1947, 50-605.

CHAPTER 4

RECLAMATION

Part 1 — Strip and Underground Mine Siting

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Part 1

Strip and Underground Mine Siting

82-4-101. Short title. This part shall be known and may be cited as "The Strip and Underground Mine Siting Act".

History: En. 50-1601 by Sec. 1, Ch. 280, L. 1974; amd. Sec. 1, Ch. 441, L. 1975; R.C.M. 1947, 50-1601.

82-4-102. Policy and purpose. (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this part:

(a) to vest in the department the authority to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules, to suspend and revoke permits, and to conduct hearings;

(c) to satisfy the requirement of Article IX, section 2, of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to insure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(3) This part is deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. 50-1602 by Sec. 2, Ch. 280, L. 1974; amd. Sec. 2, Ch. 441, L. 1975; R.C.M. 1947, 50-1602.

82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context the following definitions apply:

(1) "Board" means the board of land commissioners as provided for in Article X, section 4, of the constitution of this state.

(2) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(3) "Mineral" means mineral as defined in 82-4-203(12).

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land which the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all on-site disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train loadout facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts,

or incline planes connected with excavations penetrating the mineral stratum or strata are utilized.

History: **En. 50-1603 by Sec. 3, Ch. 280, L. 1974; amd. Sec. 3, Ch. 441, L. 1975; R.C.M. 1947, 50-1603.**

82-4-104. Application. The provisions of this part shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under 82-4-221 were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

History: **En. 50-1617 by Sec. 17, Ch. 280, L. 1974; R.C.M. 1947, 50-1617.**

82-4-105 through 82-4-110 reserved.

82-4-111. Orders and rules of board — hearings. The board shall:

(1) issue, after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part;

(4) conduct hearings under provisions of this part or rules adopted by the board.

History: **En. 50-1604 by Sec. 4, Ch. 280, L. 1974; amd. Sec. 4, Ch. 441, L. 1975; R.C.M. 1947, 50-1604.**

82-4-112. Administration. The department shall:

(1) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or permit issued pursuant to this part;

(3) order the halting of any operation that is started without first having secured a permit as required by this part;

(4) make investigations and inspections necessary to insure compliance with this part;

(5) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work;

(6) adopt rules with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration.

History: **En. 50-1605 by Sec. 5, Ch. 280, L. 1974; amd. Sec. 5, Ch. 441, L. 1975; R.C.M. 1947, 50-1605.**

82-4-113. Receipts paid into special fund — use of fund. All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to a special agency account to be designated as the mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this part and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this part until expended or until appropriated by subsequent legislative action.

History: En. 50-1610 by Sec. 10, Ch. 280, L. 1974; amd. Sec. 10, Ch. 441, L. 1975; R.C.M. 1947, 50-1610.

82-4-114 through 82-4-120 reserved.

82-4-121. Permit required. No person may commence preparatory work until the operator shall have first obtained from the department a mine-site location permit for a new strip mine or a new underground mine or a permit under part 2 of this chapter, if the application for such permit includes an appropriate long-range mining plan acceptable to the department.

History: En. 50-1606 by Sec. 6, Ch. 280, L. 1974; amd. Sec. 6, Ch. 441, L. 1975; R.C.M. 1947, 50-1606.

82-4-122. Application and approval of permit. (1) A person desiring a mine-site location permit shall file with the department an application which shall contain a reclamation plan for any preparatory work and such other information the department deems necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) The department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(1), (3).

82-4-123. Permit fee and surety bond. A fee of $50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of

Montana with surety satisfactory to the department in the penal sum to be determined by the board on the recommendation of the commissioner of not less than $200 or more than $10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of $5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(4).

82-4-124. Permit — authority under and renewal. A mine-site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of 1 year from the date of issuance and is renewable until the applicant has applied for and received a strip-mining or underground-mining permit in accordance with part 2 of this chapter.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(2).

82-4-125. Refusal of permit. (1) The department may not issue a permit under this part if it finds that a new strip mine or a new underground mine is not consistent with the purposes and policies of this part.

(2) The department shall not approve a new strip-mining site, a new underground-mining site, or preparatory work site for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in 82-4-227.

(3) The department shall not issue a permit under this part if a proposed reclamation plan does not meet the requirements of part 2 of this chapter.

History: En. 50-1608 by Sec. 8, Ch. 280, L. 1974; amd. Sec. 8, Ch. 441, L. 1975; R.C.M. 1947, 50-1608.

82-4-126. When information may be used to meet strip-mining or underground-mining permit requirements. The department may choose to accept information submitted under this part to the extent it is applicable and relevant as satisfying the requirements of part 2 of this chapter.

History: En. 50-1614 by Sec. 14, Ch. 280, L. 1974; amd. Sec. 11, Ch. 441, L. 1975; R.C.M. 1947, 50-1614.

82-4-127. Effect of siting permit on subsequent mining permits. When the department has sufficient information to approve or disapprove a mine-site location permit application on either the entire area being considered for a mine-site location permit or a portion thereof on the grounds listed in 82-4-227(2) and (4), it shall so state in a written statement to the operator. This decision is binding on the department with regard to strip-mining or underground-mining permit applications as specified in part 2 of this chapter unless:

(1) new information is submitted or obtained in compliance with part 2 of this chapter which indicates a situation not existing or known at the time of the issuance of a permit under this part;

(2) an application under this part misrepresented information related to the criteria;

(3) a situation develops because of strip-mining or underground-mining operations which was not in existence at the time of the issuance of a permit under this part.

History: En. 50-1616 by Sec. 16, Ch. 280, L. 1974; amd. Sec. 13, Ch. 441, L. 1975; R.C.M. 1947, 50-1616.

82-4-128. Termination of permit. A mine-site location permit granted by the department in accordance with the provisions of this part shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine-site location permit for which a strip-mining or an underground-mining permit is granted pursuant to the provisions of part 2 of this chapter shall be released from the terms and provisions of the mine-site location permit.

History: En. 50-1615 by Sec. 15, Ch. 280, L. 1974; amd. Sec. 12, Ch. 441, L. 1975; R.C.M. 1947, 50-1615.

82-4-129. Noncompliance — suspension of permits. (1) If any of the requirements of this part or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this part, the department shall serve a notice of noncompliance on the operator or, where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

History: En. 50-1609 by Sec. 9, Ch. 280, L. 1974; amd. Sec. 9, Ch. 441, L. 1975; R.C.M. 1947, 50-1609.

82-4-130. Procedure for hearings and appeals. All hearing and appeal procedures shall be in accordance with the Montana Administrative Procedure Act.

History: En. 50-1613 by Sec. 13, Ch. 280, L. 1974; R.C.M. 1947, 50-1613.

82-4-131 through 82-4-140 reserved.

82-4-141. Violation — penalty. (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than $100 or more than $1,000 for the violation and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than $500 and not more than $5,000. Each day on which a violation occurs constitutes a separate offense.

History: En. 50-1611 by Sec. 11, Ch. 280, L. 1974; R.C.M. 1947, 50-1611.

82-4-142. Mandamus to compel enforcement. (1) A resident of this state, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. 50-1612 by Sec. 12, Ch. 280, L. 1974; R.C.M. 1947, 50-1612; amd. Sec. 2, Ch. 201, L. 1979.

Part 2

Coal and Uranium Mine Reclamation

82-4-201. Short title. This part shall be known and may be cited as "The Montana Strip and Underground Mine Reclamation Act".

History: En. Sec. 1, Ch. 325, L. 1973; amd. Sec. 14, Ch. 441, L. 1975; R.C.M. 1947, 50-1034.

82-4-202. *(Temporary)* **Policy — findings.** (1) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources; and

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives.

(2) The legislature hereby finds and declares that:

(a) in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that all strip-mining and underground-mining operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly appears in the remaining provisions of this part;

(b) this part be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and, in particular, a response to the mandate expressed in Article IX thereof and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

82-4-202. *(Effective as provided in Compiler's Comment under 82-4-202)* **Policy — findings.** (1) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives; and

(g) provide for the orderly development of coal resources through strip or underground mining to assure the wise use of these resources and prevent the failure to conserve coal.

(2) The legislature hereby finds and declares that:

(a) in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted, that no permit be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, that certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly appears in the remaining provisions of this part, and that the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and, in particular, a response to the mandate expressed in Article IX thereof and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. Sec. 2, Ch. 325, L. 1973; amd. Sec. 15, Ch. 441, L. 1975; R.C.M. 1947, 50-1035; amd. Sec. 1, Ch. 550, L. 1979.

Compiler's Comments

Effective date — applicability. Sec. 19, Ch. 550, L. 1979, provided: "(1) This act does not become effective until the secretary of interior has conditionally or finally approved the state's permanent regulatory program under Public Law 95-87; however, rules pursuant to this act may be adopted pursuant to Title 2, chapter 4, prior to the effective date of this act and shall become effective only on the effective date of this act.

(2) Within 2 months of the secretary of interior's approval of the state's permanent regulatory program pursuant to section 503 of Public Law 95-87, as amended, each operator shall submit to the department a permit revision application to bring its permit into compliance with this act. The burden shall be on the applicant to demonstrate that the application complies with all the requirements of this act. The department shall make a written finding granting or denying the application within 5 months of its submittal. Eight months after the secretary of interior's approval of the state's permanent regulatory program, no operator may conduct strip- or underground-mining operations unless the operator's permit has been revised to conform to the requirements of this act and approved by the department. Eight months after the secretary of interior's approval of the state's regulatory program, all strip- or underground-mining operations must be conducted in accordance with Title 82, chapter 2, part 4, as amended by this act."

Severability. Sec. 20, Ch. 550, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

82-4-203. *(Temporary)* **Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(3) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining.

(4) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(5) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(6) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(7) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(8) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(9) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(10) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(11) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(12) "Mineral" means coal and uranium.

(13) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(14) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden.

(15) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

(16) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(17) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

(18) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(19) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(20) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(21) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

(22) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(23) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized.

(24) "Waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(25) "Written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part.

82-4-203. *(Effective as provided in Compiler's Comment under 82-4-202)* **Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(8) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(9) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(10) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(11) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(12) "Failure to conserve coal" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance

with reclamation standards established by the department shall not be considered failure to conserve coal.

(13) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(14) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(15) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(16) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(17) "Minable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(18) "Mineral" means coal and uranium.

(19) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area and all activities, including excavation incident thereto, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(20) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location.

(21) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

(22) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(23) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

(24) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

(25) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(26) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(27) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(28) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

(29) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(30) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized and includes mining by in situ methods.

(31) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(32) "Waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(33) "Written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part.

History: **En. Sec. 3, Ch. 325, L. 1973; amd. Sec. 1, Ch. 209, L. 1974; amd. Sec. 1, Ch. 235, L. 1974; amd. Sec. 16, Ch. 441, L. 1975; amd. Sec. 1, Ch. 538, L. 1975; R.C.M. 1947, 50-1036; amd. Sec. 2, Ch. 550, L. 1979.**

82-4-204. *(Temporary)* **Board orders, rules, and hearings.** The board shall:

(1) issue, after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part;

(4) conduct hearings under provisions of this part or rules adopted by the board.

82-4-204. *(Effective as provided in Compiler's Comment under 82-4-202)* **Board orders, rules, and hearings.** The board shall:

(1) issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part;

(4) conduct hearings under provisions of this part or rules adopted by the board.

History: En. Sec. 4, Ch. 325, L. 1973; amd. Sec. 17, Ch. 441, L. 1975; R.C.M. 1947, 50-1037; amd. Sec. 3, Ch. 550, L. 1979.

82-4-205. *(Temporary)* **Administration by department of state lands.** The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, topsoiling, and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this part or any rule adopted under this part;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this part;

(5) shall make investigations and inspections necessary to insure compliance with this part;

(6) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration.

82-4-205. *(Effective as provided in Compiler's Comment under 82-4-202)* **Administration by department of state lands.** The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, topsoiling, and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this part or any rule adopted under this part;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(5) shall make investigations and inspections necessary to insure compliance with this part;

(6) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits, monitoring, and other matters of procedure and administration;

(8) may conduct hearings under the provisions of this part.

History: En. Sec. 5, Ch. 325, L. 1973; amd. Sec. 18, Ch. 441, L. 1975; R.C.M. 1947, 50-1038; amd. Sec. 4, Ch. 550, L. 1979.

82-4-206. Procedure for hearings and appeals. All hearings and appeal procedures shall be in accordance with parts 6 and 7 of chapter 4, Title 2.

History: En. Sec. 24, Ch. 325, L. 1973; R.C.M. 1947, 50-1057.

82-4-207 through 82-4-220 reserved.

82-4-221. *(Temporary)* **Mining permit required.** An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation, which designation shall include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit shall authorize the operator to engage in strip or underground mining upon the area of land described in his application and designated in the permit for a period of 5 years from the date of its issuance. Such permit shall be renewable upon each 5-year anniversary thereafter upon application to the department at least 30 but not more than 60 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules hereunder, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251.

82-4-221. *(Effective as provided in Compiler's Comment under 82-4-202)* **Mining permit required.** (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation, which designation shall include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit shall authorize the operator to engage in strip or underground mining upon the area of land described in his application and designated in the permit for a period of 5 years from the date of its issuance. Such permit shall be renewable upon each 5-year anniversary thereafter upon application to the department at least 30 but not more than 60 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules hereunder, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden shall be on the opponents of renewal to demonstrate that the permit should not be renewed. A permit shall terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at such time as the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of every permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person shall be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision shall be approved or disapproved within a reasonable time, depending on the scope and complexity, but in no case longer than 120 days. Applications for major revisions are subject to all the permit application requirements and procedures.

History: **En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(1); amd. Sec. 5, Ch. 550, L. 1979.**

82-4-222. *(Temporary)* **Permit application.** (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land

and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip- or underground-mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at such intervals as the department requires across the surface and shall run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections shall also include all existing shafts, entries, and haulageways.

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections which have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested.

(n) contain such other or further information as the department may require.

(3) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan

for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part.

82-4-222. *(Effective as provided in Compiler's Comment under 82-4-202)* **Permit application.** (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip- or underground-mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at such intervals as the department requires across the surface and shall run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground-mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections shall also include all existing shafts, entries, and haulageways.

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected should a permit be granted;

(l) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface- and ground-water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until such information is available and is incorporated into the application;

(m) a coal conservation plan; and

(n) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections which have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested.

(n) contain such other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip- or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings shall, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received federal funds for this purpose.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part. The reclamation plan shall address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has in force for the strip- or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee must maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk

and recorder at the courthouse of the county where the major portion of mining is proposed to occur.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(5) thru (7); amd. Sec. 1, Ch. 196, L. 1979; amd. Sec. 6, Ch. 550, L. 1979.

82-4-223. *(Temporary)* **Permit fee and surety bond.** (1) An application fee of $50 shall be paid before the permit required in this part shall be issued.

(2) The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board, on the recommendation of the commissioner, of not less than $200 or more than $2,500 for each acre or fraction thereof of the area of land affected, with a minimum bond of $2,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board may require the filing of the bond prior to permit issuance or at any time thereafter.

(3) In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but in no event shall the bond be less that the total estimated cost to the state of completing the work described in the reclamation plan.

82-4-223. *(Effective as provided in Compiler's Comment under 82-4-202)* **Permit fee and surety bond.** (1) An application fee of $50 shall be paid before the permit required in this part shall be issued.

(2) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board, on the recommendation of the commissioner, of not less than $200 for each acre or fraction thereof of the area of land affected, with a minimum bond of $10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board shall adjust the amount of bond required if the cost of reclamation changes.

(3) In determining the amount of the bond, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be

required, but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: **En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(8); amd. Sec. 7, Ch. 550, L. 1979.**

82-4-224. Consent or waiver by surface owner. In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by strip-mining operations, the application for a permit shall include the written consent or a waiver by the owner or owners of the surface lands involved to enter and commence strip-mining operations on such land, except that nothing in this section applies when the mineral estate is owned by the federal government in fee or in trust for an Indian tribe.

History: **En. 50-1039.1 by Sec. 2, Ch. 538, L. 1975; R.C.M. 1947, 50-1039.1.**

82-4-225. *(Temporary)* **Application for increase or reduction in permit area.** The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and shall pay an application fee of $50 and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below $2,000, except as provided in 82-4-223.

82-4-225. *(Effective as provided in Compiler's Comment under 82-4-202)* **Application for increase or reduction in permit area.** The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and shall pay an application fee of $50 and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the area of land affected, except for incidental boundary revisions. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below $10,000, except as provided in 82-4-223.

History: **En. Sec. 7, Ch. 325, L. 1973; amd. Sec. 2, Ch. 352, L. 1977; R.C.M. 1947, 50-1040; amd. Sec. 8, Ch. 550, L. 1979.**

82-4-226. Prospecting permit. (1) On and after March 16, 1973, prospecting by any person on land not included in a valid strip-mining or underground-mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of such required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of $100. This fee shall be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for 1 year and shall be subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

History: En. Sec. 8, Ch. 325, L. 1973; amd. Sec. 20, Ch. 441, L. 1975; R.C.M. 1947, 50-1041; amd. Sec. 2, Ch. 196, L. 1979.

82-4-227. *(Temporary)* **Refusal of permit.** (1) An application for a prospecting, strip-mining, or underground-mining permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the part or rules will not be observed or that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistently with the purpose of this part.

(2) The department shall not approve the application for a prospecting, strip-mining, or underground-mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having such characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. (In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.)

(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved.

82-4-227. *(Effective as provided in Compiler's Comment under 82-4-202)* **Refusal of permit.** (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision shall not be approved by the department unless, on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that his application is in compliance with this part and the rules adopted under it.

(2) The department shall not approve the application for a prospecting, strip-mining, or underground-mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having such characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. (In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.)

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface-water or underground-water systems that supply these valley floors in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the commissioner shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of 82-4-232(3). Nothing in this subsection applies to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. In no case may strip- or underground-coal-mining be allowed within 300 feet of any occupied dwelling, unless waived by the owner, nor within 300 feet of any public building, school, church, community, or institutional building, or public park; nor within 100 feet of a cemetery; nor within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line. The department may permit such roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) No strip- or underground-mining may be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. The department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included within an area designated unsuitable for strip or underground coal

mining or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he is applying for a permit.

(10) No permit or major permit revision for a strip- or underground-coal-mining operation may be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that no failure to conserve coal will occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that any strip- or underground-coal-mining operation owned or controlled by the applicant is currently in violation of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department shall not issue a strip- or underground-coal-mining permit or major revision until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or major revision to any applicant which it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation which has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, of such a nature and duration and with such resulting irreparable damage to the environment to indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those which existed as of August 3, 1977, may be conducted on private lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress.

History: En. Sec. 9, Ch. 325, L. 1973; amd. Sec. 21, Ch. 441, L. 1975; R.C.M. 1947, 50-1042; amd. Sec. 9, Ch. 550, L. 1979.

82-4-228. *(Effective as provided in Compiler's Comment under 82-4-202)* **Designation of land unsuitable for coal mining.** (1) Any person having an interest that is or may be adversely affected may petition the department to have an area designated as unsuitable for strip- or underground-coal-mining operations or to have a designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition, the department shall hold a public hearing in the locality of the affected area after giving appropriate notice and publication of the date, time, and location thereof. Before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision regarding the petition and the reasons therefor. The hearing need not be held if all petitioners reach agreement prior to the requested hearing and withdraw their request.

(2) If petitioned, the department shall review the area petitioned for pursuant to this section and:

(a) shall designate it as an area unsuitable for all or certain types of strip- or underground-coal-mining operations if it is determined that reclamation pursuant to the requirements of this part is not technologically and economically feasible; and

(b) may designate it as an area unsuitable for all or certain types of strip or underground coal mining if the proposed coal mining operations will:

(i) be incompatible with existing state or local land-use plans or programs to the extent they affect mining in the area; or

(ii) affect fragile or historic lands in which these operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(iii) affect renewable resource lands in which these operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, these lands to include aquifers and aquifer recharge areas; or

(iv) affect natural hazard lands in which these operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology.

(3) Prior to designating any land areas as unsuitable for strip- or underground-coal-mining operations, the department shall prepare a detailed statement on:

(a) the potential coal resources of the area;

(b) the demand for coal resources; and

(c) the impact of this designation on the environment, economy, and supply of coal.

(4) A designation does not prevent mineral exploration pursuant to this part of any area so designated.

(5) The requirements of this section do not apply to lands on which strip or underground-coal-mining operations are being conducted pursuant to a permit issued under this part or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977.

History: **En. Sec. 10, Ch. 550, L. 1979.**

82-4-229 and 82-4-230 reserved.

82-4-231. *(Temporary)* **Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended. The plan shall be submitted to the department, and the department shall notify the applicant by certified or registered mail within 120 days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the 120 days an additional 120 days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable, and it may propose modifications, delete areas, or reject the entire plan. A landowner, operator, or any person aggrieved by the decision of the department may by written notice request a hearing by the board. The board shall notify the person by certified or registered mail within 20 days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(3) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings upon abandonment.

(4) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land.

82-4-231. *(Effective as provided in Compiler's Comment under 82-4-202)* **Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards. The application for permit or major revision of a permit, which shall contain the reclamation plan, shall be submitted to the department. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed

operation after adequate public notice. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding. The department shall notify the applicant by certified or registered mail within 120 days after receipt of the complete application if it is or is not acceptable. The department may extend the 120 days an additional 120 days upon notification of the operator in writing. The department shall make written findings granting or denying the permit or revision application in whole or in part. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. A landowner, operator, or any person with an interest that is or may be adversely affected may by written notice request a hearing by the board. The hearing shall be held within 30 days of the request. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon. For purposes of the hearing, the board may order site inspections of the area pertinent to the application. The board shall notify the person by certified or registered mail and all other persons by regular mail within 20 days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(3) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface-water and ground-water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(4) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area.

History: En. Sec. 10, Ch. 325, L. 1973; amd. Sec. 22, Ch. 441, L. 1975; amd. Sec. 12, Ch. 39, L. 1977; R.C.M. 1947, 50-1043; amd. Sec. 11, Ch. 550, L. 1979.

82-4-232. *(Temporary)* **Area mining required — bond — alternative plan.** (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this part.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, subsidence stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than $200 per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(7) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining.

82-4-232. *(Effective as provided in Compiler's Comment under 82-4-202)* **Area mining required — bond — alternative plan.** (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator shall as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in (b) above with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in (a) above.

(4) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material which is best able to support vegetation shall be returned as the top layer.

(5) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(6) When the backfilling, grading, subsidence stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner, after public notice and opportunity for hearing, may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than $200 per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount. No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the

requirements set by this part or until soil productivity for prime farmlands mined for coal has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to this part. Where a silt dam is to be retained as a permanent impoundment, the portion of bond pertaining thereto may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department. Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release with the department within 30 days of public notice. The hearing shall be held at the state capital or, if an objector so requests, in the locality of the proposed bond release. For purposes of the hearing, the board may order site inspections of the area for which bond release is sought and other strip- or underground-mining operations carried on by the applicant in the area. Without prejudice to the rights of the objectors or the applicant or to the responsibilities of the department, the department may establish an informal conference to resolve written objections.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining.

History: En. Sec. 11, Ch. 325, L. 1973; amd. Sec. 23, Ch. 441, L. 1975; amd. Sec. 3, Ch. 352, L. 1977; R.C.M. 1947, 50-1044; amd. Sec. 1, Ch. 172, L. 1979; amd. Sec. 12, Ch. 550, L. 1979.

82-4-233. Planting of vegetation following grading of disturbed area. (1) After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees as are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

(2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

(3) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1) of this section.

History: En. Sec. 12, Ch. 325, L. 1973; amd. Sec. 24, Ch. 441, L. 1975; R.C.M. 1947, 50-1045; amd. Sec. 2, Ch. 172, L. 1979.

82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233.

History: En. Sec. 13, Ch. 325, L. 1973; amd. Sec. 25, Ch. 441, L. 1975; R.C.M. 1947, 50-1046; amd. Sec. 3, Ch. 196, L. 1979.

82-4-235. *(Temporary)* **Planting report.** Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing. In no event shall such remaining bond be released prior to a period of 5 years from the initial planting provided for in 82-4-233.

82-4-235. *(Effective as provided in Compiler's Comment under 82-4-202)* **Planting report.** Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). In no event shall such remaining bond be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

History: En. Sec. 14, Ch. 325, L. 1973; R.C.M. 1947, 50-1047; amd. Sec. 4, Ch. 196, L. 1979; amd. Sec. 13, Ch. 550, L. 1979.

82-4-236. Vegetation as property of landowner. All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this part or rules adopted under this part become the property of the landowner after complete release of the bond, unless the operator and the landowner agree otherwise.

History: En. Sec. 15, Ch. 325, L. 1973; R.C.M. 1947, 50-1048.

82-4-237. Operator to file annual reports. (1) An operator shall file an annual report with the department within 30 days of the anniversary date of each permit. Included within this report shall be:

(a) the name and address of the operator and permit number;

(b) a report in such detail as the department shall require, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, including the type of planting or seeding, mixture and amount of seed, date of planting or seeding, and area of land planted, the extent to which expectations and predictions made in the original application have been fulfilled and any deviation therefrom, and the number of acres affected; and

(c) a revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next 1-year period.

(2) Upon receipt of the annual report, the department may make further inquiry and request further information and, if it does so, shall allow a reasonable opportunity for the operator to respond.

(3) When problem situations are revealed by review of new information or as a result of field inspections, the department may order such changes in the mining and reclamation plans as are necessary to insure compliance with this part.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(2) thru (4); amd. Sec. 5, Ch. 196, L. 1979.

82-4-238. Successor operator. Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this part as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this part, and the successor operator assumes, as part of his obligation under this part, all liability for the reclamation of the area of land affected by the former operator.

History: En. Sec. 18, Ch. 325, L. 1973; R.C.M. 1947, 50-1051.

82-4-239. *(Temporary)* **Reclamation by board.** (1) The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this part.

82-4-239. *(Effective as provided in Compiler's Comment under 82-4-202)* **Reclamation by board.** (1) The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this part. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether such land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the commissioner, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) If the department makes a finding of fact that:

(a) land or water resources have been adversely affected by past coal-mining practices; and

(b) the adverse effects are at a stage where in the public interest action to restore, reclaim, abate, control, or prevent should be taken; and

(c) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices;

then agents, employees, or contractors of the department, after giving notice by mail to the owner, if known, or, if not known, by posting notice upon the premises and advertising in a newspaper of general circulation in the county in which the land lies, may enter upon property adversely affected by past coal-mining practices and any other property necessary for access to such mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices. This act is not an act of condemnation of property or of trespass but rather an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money so expended and may file a statement thereof in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money so expended shall result in a significant increase in property value. Such statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. No lien may be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section shall be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The board may acquire the necessary property by gift or purchase or, if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) permanent facilities such as treatment plants or relocated stream channels will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices.

History: En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part); amd. Sec. 14, Ch. 550, L. 1979.

82-4-240. Reclamation of lands after bond forfeited. In keeping with the provisions of this part, the board may reclaim any affected lands with respect to which a bond has been forfeited and use moneys appropriated from the mining and reclamation fund for such purposes.

History: En. Sec. 21, Ch. 325, L. 1973; amd. Sec. 28, Ch. 441, L. 1975; R.C.M. 1947, 50-1054.

82-4-241. Receipts paid into special fund — use of fund. All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to a special agency account to be designated as the mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this part and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this part until expended or until appropriated by subsequent legislative action.

History: En. Sec. 19, Ch. 325, L. 1973; amd. Sec. 26, Ch. 441, L. 1975; R.C.M. 1947, 50-1052.

82-4-242. Funds received by board. The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining or underground mining.

History: En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part).

82-4-243 through 82-4-250 reserved.

82-4-251. *(Temporary)* **Noncompliance — suspension of permits.** (1) If any of the requirements of this part or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this part, the department shall serve a notice of noncompliance on the operator or, where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

82-4-251. *(Effective as provided in Compiler's Comment under 82-4-202)* **Noncompliance — suspension of permits.** (1) The commissioner or an authorized representative of the department shall, if he determines on the basis of an inspection that any condition or practices exist or that the permittee is in violation of any requirement of this part or any permit condition required by the part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, immediately order cessation of strip- or underground-coal-mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. The cessation order remains in effect until the commissioner or his authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). If the commissioner or his authorized representative finds that the ordered cessation of strip- or underground-coal-mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, he shall in addition to the cessation order impose affirmative obligations on the operator requiring him to take whatever steps the commissioner or his authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part which does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the commissioner or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner or his authorized representative, the commissioner or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of strip- or underground-mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order remains in effect until the commissioner or his authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the commissioner or his authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the commissioner or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions

or that such violations are willfully caused by the permittee, the commissioner or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the commissioner shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commissioner or his authorized representative shall forthwith suspend or the board shall revoke the permit. When a permit has been revoked, the board may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the strip- or underground-mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the department or the commissioner or his authorized representative who issues the notice or order. All such notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commissioner or his authorized representative, provided that any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) An operator issued a notice or an order of abatement pursuant to this section or any person having an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order may apply to the department for review of that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon receipt of the application, the department shall make an investigation. The investigation shall provide an opportunity for public hearing at the request of the applicant or the person having an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the commissioner or his authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

History: En. Sec. 17, Ch. 325, L. 1973; R.C.M. 1947, 50-1050; amd. Sec. 15, Ch. 550, L. 1979.

82-4-252. *(Temporary)* **Mandamus.** (1) A resident of this state, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

82-4-252. *(Effective as provided in Compiler's Comment under 82-4-202)* **Mandamus.** (1) A resident of this state or any person having an interest which is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest which is or may be adversely affected may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and

Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued hereunder. However, no such action may commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part in any rule, order, or permit issued hereunder. Any person may intervene as a matter of right in any such civil action. Nothing in this section restricts any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted hereunder or to seek any other relief.

(4) Any person who is injured in his person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages (including reasonable attorney and expert witness fees) only in the county in which the strip- or underground-coal-mining operation complained of is located. Nothing in this subsection affects the rights established by or limits imposed under chapter 71 of Title 39.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure.

History: En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975; R.C.M. 1947, 50-1055(1), (2); amd. Sec. 3, Ch. 201, L. 1979; amd. Sec. 16, Ch. 550, L. 1979.

82-4-253. Suit for damage to water supply. (1) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining or underground mining.

(2) Prima facie evidence of injury in a suit under this subsection is established by the removal of coal or disruption of overlying aquifer from designated groundwater areas as prescribed in Title 85, chapter 2, part 5. If the area is not a designated groundwater area, a showing that the coal or overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to defendant (operator) to show that plaintiff's (owner's) water supply was not injured thereby.

(3) An owner of water rights adversely affected may file a complaint detailing the loss of his water in quality and quantity with the department. Upon receipt of this complaint the department shall:

(a) investigate the complaint using all available information including monitoring data gathered at the mine site;

(b) require the defendant (operator) to install such monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

(c) issue within 90 days a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(d) order the mining operator in compliance with chapter 2 of Title 85 to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time, replace the water in like quality, quantity, and duration, if the loss is caused by the surface coal mining operation; and

(e) order the suspension of the operator's permit for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining or underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining or underground mining on the dominant tract.

(5) This section and 82-4-252 do not create, modify, or affect any right, liability, or remedy other than as expressly provided.

History: En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975; R.C.M. 1947, 50-1055(3) thru (5).

82-4-254. *(Temporary)* **Violation — penalty.** (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than $100 or more than $1,000 for the violation and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than $500 and not more than $5,000. Each day on which a violation occurs constitutes a separate offense.

82-4-254. *(Effective as provided in Compiler's Comment under 82-4-202)* **Violation — penalty.** (1) A person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or permit, term, or condition and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board or department, or order of the commissioner shall be assessed a penalty of not less than $750 for each day during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements.

(2) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(3) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of the part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(4) Any relief granted by a court under subsection (3)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(5) A person who violates any of the provisions of this part or any determination or order adopted under this part, or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(6) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(7) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(8) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both.

History: En. Sec. 23, Ch. 325, L. 1973; R.C.M. 1947, 50-1056; amd. Sec. 17, Ch. 550, L. 1979.

Part 3

Metal Mine Reclamation

82-4-301. Legislative findings. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201.

82-4-302. Purpose. (1) The purposes of this part are to provide:

(a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;

(b) authority for cooperation between private and governmental entities in carrying this part into effect;

(c) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and

(d) priorities and values to the aesthetics of our landscape, waters, and ground cover.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(9) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(10) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining, that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining or exploration ceases.

(11) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(12) "Underground mining" means all methods of mining other than surface mining.

(13) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(14) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1979.

82-4-304. Exemption — works performed prior to promulgation of rules. No provision of this part shall be applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219; amd. Sec. 4, Ch. 201, L. 1979.

82-4-305. Exemption — small miners — written agreement. (1) No provisions of this part shall apply to any small miner when the small miner annually agrees in writing:

(a) that he shall not pollute or contaminate any stream;

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(c) he shall provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners or operators of said project to a fine of not less than $10 or more than $100, payable to the department of revenue of the state of Montana or any board, commission, or person authorized to collect said fine.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979.

82-4-306. Confidentiality of application information. Any and all information obtained by the board or by the director or his staff by virtue of applications for exploration licenses and all information obtained from small miners is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation; provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under a development or operating permit. It is further provided that any information obtained by the board or by the director or his staff by virtue of such applications is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of the part or rules has been determined by the department or by judicial order. Failure to comply with the secrecy provisions of this part shall be punishable by a fine of up to $1,000.

History: En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.

82-4-307. Review of existing files. Existing departmental files shall be reviewed, and their contents shall be segregated and available for public inspection to the same extent as new files under 82-4-306.

History: En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.1.

82-4-308. Release by waiver. An applicant may release the board and department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department.

History: En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.2.

82-4-309. Exemption — operations on federal lands. This part shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part.

History: En. Sec. 23, Ch. 252, L. 1971; R.C.M. 1947, 50-1223.

82-4-310. Exemption — sample collectors. This part shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding $100 per year.

History: En. Sec. 24, Ch. 252, L. 1971; R.C.M. 1947, 50-1224.

82-4-311. Hard-rock mining account. All fees, fines, penalties, and other uncleared moneys which have been or will be paid to the department of state lands under the provisions of this part shall be placed in the earmarked revenue fund in the state treasury and credited to a special account to be designated as the hard-rock mining and reclamation account. This account shall be available to the department by appropriation and shall be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year shall not lapse but shall be carried forward for the purposes of this section until expended or until appropriated by subsequent legislative action.

History: En. 50-1227 by Sec. 1, Ch. 29, L. 1977; R.C.M. 1947, 50-1227.

82-4-312 through 82-4-320 reserved.

82-4-321. Administration. The board is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. The board may delegate such powers, duties, and functions to the department as it deems necessary for the performance of its duties as administrator of this part. The board shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974; R.C.M. 1947, 50-1204.

82-4-322. Investigations, research, and experiments. The board shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971; R.C.M. 1947, 50-1205.

82-4-323. Interagency cooperation — receipt and expenditure of funds. The board shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the board requests that they provide. The board may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in 82-4-336.

History: En. Sec. 6, Ch. 252, L. 1971; R.C.M. 1947, 50-1206.

82-4-324 through 82-4-330 reserved.

82-4-331. Exploration license required — employees included. (1) No person shall engage in exploration in the state without first obtaining an exploration license from the board to do so, such license to be issued for a period of 1 year from date of issue and to be renewable from year to year on application therefor filed at any time within the 30 days next preceding the expiration of the current license and payment of like fee as required for a new license, provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law. Such license shall be subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part shall be deemed included in and covered by such license.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(part); amd. Sec. 3, Ch. 588, L. 1979.

82-4-332. Exploration license. (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of $5 to the board;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the board;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by rule determine the precise nature of such exploration map or sketch. The applicant must state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of the certificate to the board.

(4) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(5) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(2); amd. Sec. 5, Ch. 201, L. 1979; amd. Sec. 4, Ch. 588, L. 1979.

82-4-333. Repealed. Sec. 8, Ch. 588, L. 1979.

82-4-334. Exception — geological phenomena. Upon proper application by the holder of an exploration license, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(6); amd. Sec. 5, Ch. 588, L. 1979.

82-4-335. Operating permit. No person shall engage in mining or disturb land in anticipation of mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(1) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(2) minerals expected to be mined;

(3) a proposed reclamation plan;

(4) expected starting date of mining;

(5) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(6) types of access roads to be built and manner of reclamation of road sites on abandonment; and

(7) a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979.

82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of mining on that portion of mine complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(8) A reclamation plan shall be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209.

82-4-337. Inspection — issuance of operating permit — modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30 days of receipt.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of mining within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of mining within such time period, the operating permit shall be issued upon receipt of the bond as required in 82-4-338. The department shall promptly notify the applicant of the form and amount of bond which will be required. No permit may be issued until sufficient bond has been submitted pursuant to 82-4-338.

(c) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit shall be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979.

82-4-338. Performance bond. (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than $200 or more than $2,500 for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this part and the rules of the board. In lieu of such bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.

(2) No bond filed in accordance with the provisions of this part shall be released by the department until the provisions of this part, the rules adopted pursuant thereto, and this reclamation plan have been fulfilled.

History: En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211.

82-4-339. Annual report of activities by permittee — fee. Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

(1) identify the permittee and the permit number;

(2) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(3) estimate acreage to be newly disturbed by operation in the next 12-month period; and

(4) update any maps previously submitted or specifically requested by the board. Such maps shall show:

(a) the permit area;

(b) the unit of disturbed land;

(c) the area to be disturbed during the next 12-month period;

(d) if completed, the date of completion of operations;

(e) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(f) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

History: En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212.

82-4-340. Successor operator. When one operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(3).

82-4-341. Compliance with reclamation plan — reclamation by board. (1) Following receipt of the permittee's report and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules.

(2) The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, provided that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the board, reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

(4) If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the board or if reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or such longer period as may have been authorized hereunder or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment, and material under its control or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

(5) The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within 30 days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond. The permittee shall be liable for the remainder of the cost.

(6) In addition to the other liabilities imposed by this part, failure to commence action to remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years, or such longer period as the board may permit on permittee's application therefor or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same.

History: **En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974; R.C.M. 1947, 50-1213.**

82-4-342 through 82-4-350 reserved.

82-4-351. Reasons for denial of permit. (1) A permit may be denied for any of the following reasons:

(a) the plan of development, mining, or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit shall be in writing and state the reasons therefor.

History: **En. Sec. 14, Ch. 252, L. 1971; R.C.M. 1947, 50-1214; amd. Sec. 1, Ch. 174, L. 1979.**

82-4-352. Reapplication with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the board a new plan for reclamation.

History: **En. Sec. 15, Ch. 252, L. 1971; R.C.M. 1947, 50-1215.**

82-4-353. Administrative remedies — notice — parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice shall be published once a week for 3 successive weeks.

(2) All hearings and appeal procedures shall be in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held hereunder upon a showing that such person is capable of adequately representing the interests claimed.

(3) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

History: **En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977; R.C.M. 1947, 50-1216.**

82-4-354 through 82-4-360 reserved.

82-4-361. Violation — penalties. (1) A person who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than $100 or more than $1,000 for the violations and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

History: En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974; R.C.M. 1947, 50-1222.

82-4-362. Suspension of permits. (1) If any of the requirements of this part or the rules or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, where found necessary, the commissioner shall order the suspension of the permit. The notice or order shall be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance shall specify in what respects the operator has failed to comply with this part, the rules, or the reclamation plan.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

History: En. 50-1225 by Sec. 12, Ch. 281, L. 1974; R.C.M. 1947, 50-1225.

Part 4

Opencut Mining Reclamation

82-4-401. Short title. This part shall be known and may be cited as "The Opencut Mining Act".

History: En. Sec. 1, Ch. 326, L. 1973; R.C.M. 1947, 50-1501.

82-4-402. Policy. It is the policy of this state to provide for the reclamation and conservation of land subjected to opencut bentonite, clay, scoria, phosphate rock, sand, or gravel mining. Therefore, it is the purpose of this part to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or which may be affected by opencut bentonite, clay, scoria, phosphate rock, sand, or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic, or other unique areas, and to promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 326, L. 1973; amd. Sec. 2, Ch. 209, L. 1974; amd. Sec. 2, Ch. 235, L. 1974; R.C.M. 1947, 50-1502.

82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(2) "Board" means the state board of land commissioners.

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(4) "Final cut" means the last pit created in an opencut-mined area.

(5) "Highwall" means that side of the pit adjacent to unmined land.

(6) "Landowner" means the owner of land directly or indirectly affected by an opencut-mining operation.

(7) "Opencut mining" means the mining of bentonite, clay, scoria, phosphate rock, sand, or gravel by removing the overburden lying upon natural deposits thereof and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality, or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel.

(8) "Operator" means a person engaged in and controlling an opencut-mining operation.

(9) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel. "Spoil" is the overburden disturbed from its natural state in the process of opencut mining.

(10) "Person" means a natural person or a firm, association, partnership, cooperative, or corporation or any department, agency, or instrumentality of the state or any governmental subdivision or any other entity whatever.

(11) "Progress report" means a report showing the land which the operator has affected by opencut mining during the year. The report shall show the number of acres of affected land and all reclamation accomplished.

(12) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice shall be given once a week for 3 successive weeks.

(13) "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

(14) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas, and an explanation of proposed reclamation of the land with appropriate maps.

(15) "Refuse" means all waste material directly connected with the opencut-mining operations.

(16) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

History: En. Sec. 4, Ch. 326, L. 1973; amd. Sec. 4, Ch. 209, L. 1974; amd. Sec. 4, Ch. 235, L. 1974; amd. Sec. 17, Ch. 39, L. 1977; R.C.M. 1947, 50-1504.

82-4-404. Exemption — operations covered by metal mine reclamation. Nothing in this part may be construed to be applicable to mining or exploration operations which are regulated under the provisions of part 3 of this chapter.

History: En. Sec. 18, Ch. 326, L. 1973; amd. Sec. 29, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.

82-4-405. Inapplicability to state and local government. The provisions of this part relating to fees or bonds do not apply to the state of Montana, counties, cities, or towns.

History: En. 50-1516.1 by Sec. 1, Ch. 81, L. 1975; amd. Sec. 30, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.1.

82-4-406. Exemption — operations on federal lands. This part is not applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering the land impose controls for reclamation of those lands equal to or greater than those imposed by this part.

History: En. 50-1517 by Sec. 1, Ch. 219, L. 1975; amd. Sec. 31, Ch. 39, L. 1977; R.C.M. 1947, 50-1517.

82-4-407 through 82-4-420 reserved.

82-4-421. Administration — delegation of functions. The board is the administrator of this part, and it has all the power necessary to implement and enforce it. The board may delegate to the commissioner of state lands such powers, duties, and functions under this part as it considers necessary for the performance of its duties.

History: En. Sec. 5, Ch. 326, L. 1973; amd. Sec. 18, Ch. 39, L. 1977; R.C.M. 1947, 50-1505.

82-4-422. Powers, duties, and functions of board. The board has the following powers, duties, and functions to:

(1) enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the board that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part;

(2) prepare and adopt rules pertaining to opencut mining to accomplish the purposes of this part;

(3) conduct hearings and, for the purposes of conducting such hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

(4) adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this part;

(5) reclaim any affected land with respect to which a bond has been forfeited; and

(6) make investigations or inspections which are considered necessary to insure compliance with any provision of this part.

History: En. Sec. 6, Ch. 326, L. 1973; amd. Sec. 19, Ch. 39, L. 1977; R.C.M. 1947, 50-1506.

82-4-423. Contracts for reclamation. The board is hereby authorized to enter into contracts with operators in the name of the state of Montana which will provide for the reclamation of lands on which opencut mining of bentonite, clay, scoria, phosphate rock, sand, and gravel has been or is to be conducted. The board is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and the board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: En. Sec. 3, Ch. 326, L. 1973; amd. Sec. 3, Ch. 209, L. 1974; amd. Sec. 3, Ch. 235, L. 1974; amd. Sec. 16, Ch. 39, L. 1977; R.C.M. 1947, 50-1503.

82-4-424. Receipt and expenditure of funds. (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The board may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining that have not been reclaimed and rehabilitated in accordance with the standards of this part.

History: En. Sec. 11, Ch. 326, L. 1973; amd. Sec. 24, Ch. 39, L. 1977; R.C.M. 1947, 50-1511.

82-4-425. Inspection of opencut mining by board. The board or its accredited representatives may enter upon lands subjected to opencut mining at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with.

History: En. Sec. 12, Ch. 326, L. 1973; amd. Sec. 25, Ch. 39, L. 1977; R.C.M. 1947, 50-1512.

82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part, the board may reclaim any affected lands with respect to which a bond has been forfeited.

History: En. Sec. 14, Ch. 326, L. 1973; amd. Sec. 27, Ch. 39, L. 1977; R.C.M. 1947, 50-1514.

82-4-427. Board hearing. (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act governs hearings before the board and judicial review of decisions of the board under this part.

History: En. Sec. 15, Ch. 326, L. 1973; amd. Sec. 28, Ch. 39, L. 1977; R.C.M. 1947, 50-1515.

82-4-428 through 82-4-430 reserved.

82-4-431. Contract for reclamation required. After March 16, 1973, no operator may conduct opencut-mining operations which will result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part.

History: En. Sec. 7, Ch. 326, L. 1973; amd. Sec. 20, Ch. 39, L. 1977; R.C.M. 1947, 50-1507.

82-4-432. Application for contract — contents — issuance — amendment. (1) Applications for a contract shall be made upon a form furnished by the board, which form shall contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume which has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands so described.

(2) The application shall be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50; and

(c) the operator's plan of his operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the board of his intention to submit a plan and requests the board to examine the area to be mined, the board shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(4) Upon receipt of the application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the board may issue a contract to the applicant which entitles him to continue in or engage in opencut mining on the land therein described.

(5) An operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the board. Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the board may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by contract, except affected land, by notifying the board thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part shall be reduced proportionately.

History: En. Sec. 8, Ch. 326, L. 1973; amd. Sec. 21, Ch. 39, L. 1977; R.C.M. 1947, 50-1508.

82-4-433. Bond. (1) A bond required to be filed in this part by the operator shall be in such form as the board prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part and all rules of the board. The bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The penalty of the bond shall be in an amount not to exceed the costs of restoration required by this part as determined by the board but may not be less than $200 or more than $1,000 per acre.

(2) In lieu of the bond, the operator may deposit with the board cash and government securities or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the mined acreages have been reclaimed as provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or security shall cover only actual mined acreages and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the board pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The board shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, he shall notify the board thereof. If the board releases the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

History: En. Sec. 9, Ch. 326, L. 1973; amd. Sec. 22, Ch. 39, L. 1977; R.C.M. 1947, 50-1509.

82-4-434. Reclamation plan part of contract — requirements. The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the board before commencing any opencut mining and may not commence mining before the plan receives approval from the board. The operator may request and receive a meeting with the board prior to submission of the plan. If the board does not notify the operator that it has approved or disapproved a plan within 30 days after the board has received the plan, the board is considered to have approved the plan. The board, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original 30-day period. The board shall submit each reclamation plan or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The board may seek technical help from any state or federal agency. The board shall submit the plan immediately to the director of the university of Montana statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The board may approve a reclamation plan only if the board has found that the plan provides for the best

possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the board, it shall become a part of the contract but is subject to annual review and modification by the board.

(2) The board may not approve any reclamation plan unless the plan provides:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the board;

(i) that all operations will be conducted so as to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises which will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time.

(3) If reclamation according to the plan has not been completed in the time specified, the board after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the board a new reclamation plan or amendment to the existing plan, including extensions of time.

(b) The board may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the board in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than $200 per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the board shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the board and the operator and shall remain in force until terminated by mutual consent or by the board upon 6 months' notice.

History: En. Sec. 10, Ch. 326, L. 1973; amd. Sec. 23, Ch. 39, L. 1977; R.C.M. 1947, 50-1510.

82-4-435. Operation without contract — penalty. Anyone required by this part to have a contract and who engages in opencut mining without previously securing a contract to do so as prescribed by this part is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 and not more than $1,000. Each day of operation without a contract required by this part is a separate violation.

History: En. Sec. 13, Ch. 326, L. 1973; amd. Sec. 26, Ch. 39, L. 1977; R.C.M. 1947, 50-1513.

CHAPTERS 5 THROUGH 9

RESERVED

CHAPTER 10

OIL AND GAS — GENERAL PROVISIONS

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Part 1

Royalty Interests

82-10-101. Action for accounting for royalty. (1) Whenever an owner of a royalty interest in or attaching to lands producing natural gas, oil, or other minerals or in or to the natural gas, oil, or other mineral production from said lands, whether said royalty is payable in kind out of the product of the lands or out of the money proceeds from the sale of the product of said lands, shall make a written demand upon the person or persons obligated to deliver or pay such royalty for an accounting of the natural gas, oil, or other minerals produced from said lands and makes written demand for delivery or payment of such owner's royalty as may then be due and the person or persons obligated for the delivery or payment of said royalty fail to make the accounting demanded and the payment or delivery of the royalty due within a period of 60 days following the date upon which said demand is made, then the owner of said royalty may file an action in the district court of the county wherein said lands are located to compel the accounting demanded and to recover the payment or delivery of the royalty due against the person or persons obligated as aforesaid.

(2) In said action the successful party or parties recovering judgment against the person or persons obligated shall, in addition to relief by way of accounting and recovery of the royalty due as hereinabove provided, also recover judgment for a sum of money by way of reasonable attorney's fees to be allowed by the court together with the costs allowed to successful parties by law in actions generally in said court.

(3) Whenever the same person or persons is or are obligated for delivery or payment of said royalty to separate owners of royalty in or to a tract of land or any portion of said land or the product of the whole or any part of said land, then any number of said owners of royalty may join their separate causes of action as parties plaintiff in the action herein provided for, and in their complaint filed in said action, each cause of action of each of the several plaintiffs shall be set forth separately in said complaint, and the judgment given, made, and rendered upon said complaint shall adjudge the relief to one or more of the plaintiffs and deny relief to any one or more of said plaintiffs accordingly as the evidence may establish.

(4) If the defendant or defendants prevail in said action against any one or more of said plaintiffs, the court shall adjudge and allow to such defendant or defendants and against the unsuccessful plaintiff or plaintiffs recovery of a sum of money as reasonable attorney's fees to be allowed by the court and adjudge and allow costs to said defendant to be recovered from the said unsuccessful plaintiff or plaintiffs in said action, as provided for by law in actions generally in said court.

History: **En. Sec. 1, Ch. 78, L. 1943; R.C.M. 1947, 60-501.**

82-10-102. Remedy not exclusive. The remedy herein provided for is in the nature of a special remedy additional to and not a substitute for other remedies given by law to owners of royalties in lands of the character specified, and all acts or parts of acts in conflict with the provisions of this part shall not apply in actions authorized and provided for by this part.

History: **En. Sec. 2, Ch. 78, L. 1943; R.C.M. 1947, 60-502.**

Part 2

Lease of Local Government Land

82-10-201. Authorization for lease and terms — land not subject to leasing. The governing body of any county, city, town, school district, or incorporated political subdivision within the state of Montana may, if in the best interests of the county, city, town, school district, or incorporated political subdivision, lease any real property owned by the county, city, town, school district, or incorporated political subdivision for oil and gas development purposes. Such leases shall be made upon the best terms obtainable, shall provide for such terms, except as hereinafter provided, as the governing body shall consider to be for the best interests of the county, city, town, school district, or incorporated political subdivision, shall reserve a royalty of not less than 12 ½% which shall include any royalty payable to any person other than the lessor, and shall be for a period not exceeding 10 years and so long thereafter as oil, gas, or other hydrocarbons shall be produced from the premises embraced in the lease. However, nothing contained herein shall authorize the leasing of lands acquired by a county by tax deed except under the provisions of Title 7, chapter 8, part 25.

History: **En. Sec. 1, Ch. 131, L. 1953; R.C.M. 1947, 60-701; amd. Sec. 6, Ch. 201, L. 1979.**

82-10-202. Acreage pooling. When deemed in the best interests of the county, city, town, school district, or incorporated political subdivision, the governing body may enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and for the apportionment of oil or gas royalties or both on an acreage or other equitable basis and may modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation; provided, however, that such agreements shall not change the percentages of royalties to be paid to the county, city, town, school district, or incorporated political subdivision from the percentages as fixed in its leases.

History: **En. Sec. 2, Ch. 131, L. 1953; R.C.M. 1947, 60-702.**

82-10-203. Interference with normal use of land prohibited. In the event such real property is held or used for a specific purpose, any lease made under the provisions of this part shall contain such protective provisions as may be necessary to prevent any interference by the lessee with the normal use of such real property for such purpose by the county, city, town, school district, or incorporated political subdivision.
History: En. Sec. 3, Ch. 131, L. 1953; R.C.M. 1947, 60-703.

82-10-204. Lease of acquired oil and gas interests. When in any deed or contract for sale a county has reserved or excepted an interest in oil and gas in and under any land acquired by tax deed, the board of county commissioners may lease such interest for oil and gas development purposes upon the same terms and conditions as are provided for the leasing of lands which have been acquired by tax deed, offered for sale and not sold or may ratify, confirm, and adopt any then-existing mineral or oil and gas lease insofar as it describes such land. All such leases, ratifications, confirmations, and adoptions heretofore executed by the board of county commissioners are declared to be valid and are ratified, approved, and confirmed.
History: En. Sec. 1, Ch. 155, L. 1957; R.C.M. 1947, 60-704.

Part 3

Underground Gas Storage Reservoirs

82-10-301. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Native gas" means gas which has not been previously withdrawn from the earth.

(3) "Natural gas" means gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel.

(4) "Natural gas public utility" means any person, firm, or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(5) "Underground reservoir" means any subsurface sand, stratum, or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom.

(6) "Underground storage" means the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir.
History: En. Sec. 1, Ch. 259, L. 1955; amd. Sec. 83, Ch. 253, L. 1974; R.C.M. 1947, 60-801.

82-10-302. Policy. (1) The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available natural gas to the domestic, commercial, and industrial consumers of this state, or which provides a better year-round market to the various gas fields serves the public interest and welfare of this state.

(2) Therefore, in the manner hereinafter provided, the board and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

History: **En. Sec. 2, Ch. 259, L. 1955; amd. Sec. 84, Ch. 253, L. 1974; R.C.M. 1947, 60-802.**

82-10-303. Use of eminent domain to acquire underground reservoirs. (1) A natural gas public utility may acquire through the exercise of the right of eminent domain as provided in this part for its use for the underground storage of natural gas an underground reservoir which the board finds is suitable and in the public interest for the underground storage of natural gas, and in connection with the underground reservoir, the utility may acquire such other interests in property as may be required adequately to maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) No sand, formation, or stratum which is producing or has produced or which is capable of producing oil is subject to appropriation under this section.

(b) No gas-bearing sand, formation, or stratum is subject to appropriation under this section, unless the recoverable volumes of native gas therein have all been produced or unless the sand, formation, or stratum has a greater value or utility as an underground reservoir for the purpose of insuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas or for the conservation of natural gas than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas therein. Gas, sand, formation, or stratum may not be acquired under this part when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations, not exceeding, however, the quantity of the appropriated gas that remained recoverable from the sand, formation, or stratum at the time of its acquisition, if the operator was at that time entitled to the whole thereof or if the operator was at that time entitled to less than the whole thereof, then not to exceed the quantity thereof to which the operator was then entitled.

(c) Only the area of the underground sand, formation, or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated.

(d) No rights or interests in existing underground gas reservoirs being used for the injection, storage, or withdrawal of natural gas owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the same are subject to appropriation.

(2) The exercise of the right of eminent domain granted by this section shall be without prejudice to the rights of the owner of the lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir

against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with those rules or orders in order to protect the storage reservoir shall be paid by the natural gas public utility.

History: **En. Sec. 3, Ch. 259, L. 1955; amd. Sec. 85, Ch. 253, L. 1974; R.C.M. 1947, 60-803.**

82-10-304. Certificate of board required prior to use of eminent domain. (1) A natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the board a certificate setting out the findings of the board:

(a) that the underground sand, stratum, or formation sought to be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest;

(b) the amount of native gas, if any, remaining therein and the portion thereof recoverable; and

(c) that the applicant has in good faith sought to acquire the rights sought under this part.

(2) The board may not issue the certificate until after a public hearing is had on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action.

History: **En. Sec. 4, Ch. 259, L. 1955; amd. Sec. 86, Ch. 253, L. 1974; R.C.M. 1947, 60-804.**

82-10-305. Proceedings. Having first obtained a certificate from the board, a natural gas public utility desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner provided in this section. The natural gas public utility shall present to the district court of the county wherein the land is situated a complaint setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated, and the names of the owners thereof as shown by the records of the county. The plaintiff shall file the certificate of the board as a part of its complaint, and no order by the court granting the complaint shall be entered without the certificate being filed therewith. Subsequent proceedings shall follow the procedure provided by law in the exercise of the rights of eminent domain, Title 70, chapters 30 and 31.

History: **En. Sec. 5, Ch. 259, L. 1955; amd. Sec. 87, Ch. 253, L. 1974; R.C.M. 1947, 60-805.**

Part 4

Abandoned Oil and Gas Wells — Reclamation

82-10-401. Notice required before abandonment of well — owner's option. No person shall plug and abandon an oil or gas well located within this state without first giving reasonable notice of his intention to do so to the surface owner of record of the land on which said well is located. Upon receipt of notice to plug and abandon, the surface owner may, by written notice given within 15 days thereafter, direct that the well pipe for said well shall be buried to a depth of not less than 3 feet. The board of oil and gas conservation shall adopt regulations to implement this section.

History: **En. 60-901 by Sec. 1, Ch. 161, L. 1974; R.C.M. 1974, 60-901.**

82-10-402. Inventory of abandoned wells and seismic operations — reclamation procedures. (1) The department of natural resources and conservation shall maintain a list of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state which disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board of oil and gas conservation. This list shall be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the list supplied by the department under the preceding subsection against its drilling records and shall determine the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a person so listed applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by his abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located under the preceding subsection, the board shall notify the department of natural resources and conservation. The department may then reclaim the disturbed land with funds available from the resource indemnity trust fund under 15-38-202, when available.

History: **En. 60-149 by Sec. 3, Ch. 260, L. 1974; R.C.M. 1947, 60-149.**

CHAPTER 11

OIL AND GAS CONSERVATION

Part 1 — Regulation by Board of Oil and Gas Conservation

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Part 1

Regulation by Board of Oil and Gas Conservation

82-11-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(4) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of

energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(5) "Field" means the general area underlaid by one or more pools.

(6) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (6) of this section.

(7) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(8) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

(9) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(10) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(11) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(12) "Waste" means:

(a) physical waste, as that term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(d) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)

History: En. Sec. 3, Ch. 238, L. 1953; amd. Sec. 55, Ch. 253, L. 1974; amd. Sec. 1, Ch. 336, L. 1977; R.C.M. 1947, 60-126(part); amd. Sec. 1, Ch. 19, L. 1979.

Compiler's Comments

Severability. Sec. 8, Ch. 19, L. 1979, was a severability section.

82-11-102. Oil or gas wells not public utilities. Nothing in this chapter shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

History: En. Sec. 20, Ch. 238, L. 1953; amd. Sec. 79, Ch. 253, L. 1974; R.C.M. 1947, 60-143.

82-11-103. Lands subject to law. This chapter applies to all lands in the state lawfully subject to its taxation and police powers. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to effect the intent and purposes of this chapter and otherwise applies to those lands to such extent as any officer of the United States having jurisdiction or his duly authorized representative approves any of the provisions of this chapter or an order of the board which affects those lands. This chapter also applies to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the board may, with respect to those unit agreements, suspend the application of this chapter or any part of this chapter so long as the conservation of oil and gas and the prevention of waste as provided in this chapter is accomplished under the unit agreements. The suspension does not relieve an operator or owner from making such reports as may be required by the board with respect to operations and production under the unit agreement, and the suspension does not relieve an operator or owner from the payment of taxes on his oil and gas production or payment for permit fees as required by this chapter.

History: **En. Sec. 17, Ch. 238, L. 1953; amd. Sec. 76, Ch. 253, L. 1974; R.C.M. 1947, 60-140.**

82-11-104. Construction — no conflict with board of land commissioners' authority. Nothing herein contained shall be construed to conflict with 77-3-430, granting the board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others.

History: **En. Sec. 3, Ch. 238, L. 1953; amd. Sec. 55, Ch. 253, L. 1974; amd. Sec. 1, Ch. 336, L. 1977; R.C.M. 1947, 60-126(part).**

82-11-105 through 82-11-110 reserved.

82-11-111. Powers and duties of board. (1) The board shall make such investigations as it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter with respect thereto.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) regulate the disposal of salt water and oil field wastes;

(b) classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.

(3) The board shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wildcat wells" and make such orders as in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate (daily or otherwise) of production of gas from

that pool by any well then or thereafter drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part).

82-11-112. Intergovernmental cooperation. The board may cooperate with any other state, interstate, or federal agency and other governmental agencies of the state to effect the objects and purposes of this chapter and expend such funds as may be reasonably necessary in connection therewith.

History: En. Sec. 18, Ch. 238, L. 1953; amd. Sec. 77, Ch. 253, L. 1974; R.C.M. 1947, 60-141.

82-11-113. Role of board in implementation of national gas policy. The board is designated as the state jurisdictional agency for purposes of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

History: En. Sec. 2, Ch. 19, L. 1979.

Compiler's Comments

Codification. Sec. 7, Ch. 19, L. 1979, provided: "It is intended that sections 2 through 5 be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to sections 2 through 5.

Effective date. Sec. 9, Ch. 19, L. 1979, provided: "This act is effective upon passage and approval." Approved February 9, 1979.

82-11-114. Appointment of examiners. The board shall designate one or more examiners to make determinations as defined in 82-11-101. To be appointed as an examiner, an individual must possess a degree in petroleum engineering or geology.

History: En. Sec. 3, Ch. 19, L. 1979.

82-11-115. Procedure to make determinations. (1) The board shall adopt rules to govern the making of determinations. These rules shall be adopted pursuant to the Montana Administrative Procedure Act, but the procedure to be employed in making determinations is not subject to the Montana Administrative Procedure Act. The rules may provide that testimony may only be submitted in writing and that no cross-examination is allowed.

(2) Any determination made by an examiner under this section and 82-11-114 shall be reviewed by the board upon request of two members of the board. The review by the board is subject to the notice and hearing but not the appeal provisions of the contested case procedures of the Montana Administrative Procedure Act. The request for review must be made within 20 days after an examiner makes a determination. If no request for a review is made during this 20-day period, the examiner's determination is considered to be the determination of the board and the determination, together with the accompanying record, shall be forwarded to the federal energy regulatory commission for review. If a review by the board is requested, the board shall forward the final determination to the federal energy regulatory commission.

History: En. Sec. 4, Ch. 19, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to H.B. 130 (Ch. 19, L. 1979) provided: "House Bill No. 130 is enacted in order to secure state jurisdiction under terms of the Natural Gas Policy Act of 1978. The rules adopted should go no further than absolutely required by state or federal law."

82-11-116. Public access. All applications for a determination and all determinations made pursuant to 82-11-114 and 82-11-115 shall be made available for public inspection at the Billings and Helena offices of the board.

History: En. Sec. 5, Ch. 19, L. 1979.

82-11-117 through 82-11-120 reserved.

82-11-121. Oil and gas waste prohibited. Waste of oil and gas or either of them as waste is defined in this chapter is prohibited.

History: En. Sec. 1, Ch. 238, L. 1953; Sec. 60-124, R.C.M. 1947; amd. and redes. 60-127.1 by Sec. 54, Ch. 253, L. 1974; R.C.M. 1947, 60-127.1.

82-11-122. Notice of intention to drill or conduct seismic operations. It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. It is unlawful to conduct seismic explorations with explosives without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.

History: En. Sec. 5, Ch. 238, L. 1953; amd. Sec. 57, Ch. 253, L. 1974; amd. Sec. 2, Ch. 260, L. 1974; R.C.M. 1947, 60-128.

82-11-123. Requirements for oil and gas operations. Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures, to facilitate the discovery of potential geothermal energy sources, reports on well locations, and the filing of directional surveys, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

(5) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well;

(6) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof; and

(7) that every person who produces, transports, or stores oil or gas in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities thereof, which records shall be available for examination by the board or its employees at all reasonable times,

and that that person file with the board such reports as it may prescribe with respect to quantities, transportations, and storages of the oil or gas.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part).

82-11-124. Requirements relating to waste prevention. Subject to the administrative control of the department under 2-15-121, the board shall, for the purpose of preventing waste:

(1) regulate the drilling, producing, and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and

(2) fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part).

82-11-125. Availability of cores or chips, cuttings, and bottom-hole temperatures to board. (1) An owner drilling a well for gas or oil shall make available to the board at its field offices representative cores or chips, when available, the cuttings from the well, and the bottom-hole temperatures of the wells, in order to facilitate the discovery of geothermal potential. However, cores, chips, or cuttings need not be so made available for a period of 6 months following completion or abandonment of the wells. The board may, however, relieve the owner of a well of the obligation to furnish cores, chips, or cuttings when, in the opinion of the board, the furnishing thereof would be unduly burdensome for the owner; however, the owner desiring relief must apply to and receive permission from the board to not so furnish.

(2) The owner of a stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the board's rules, shall within 6 months from the date of the cessation of the drilling of the well make available to the board complete sets of sample cuttings and representative cores or chips and well logs of the wells, which logs shall include among other information the size of casing used, the type and depth of water if any located, and bottom-hole temperatures for geothermal purposes. The cuttings, cores, chips, and logs shall be impounded and kept secure and confidential by the board until such time that the board desires to use the same; however, the board may not use the logs, chips, cores, and cuttings from stratigraphic test wells until a period of 3 years from the date of their impounding by the board has elapsed, unless the owner of the stratigraphic test well consents to their use by the board prior to the expiration of the 3-year period. The board, during the period of impoundment for any cores, cuttings, chips, or logs from any stratigraphic test well, may not give any person access to the cores, chips, cuttings, or logs, and it may not disclose any information relating thereto or derived therefrom. The board shall require and the owner of a stratigraphic test well shall furnish, prior to the commencement of drilling of the well, a good and sufficient surety bond, to be approved prior to the commencement of the drilling, conditioned upon the proper plugging of the well prior to

abandonment, the amount of the bond to be determined by the estimated depth as in the board's rules provided for oil and gas wells, and prior to abandonment, the wells shall be plugged by the owner thereof or by the surety should the owner be in default, the plugging to conform to the standards set down and determined by the board.

(3) Notwithstanding subsection (2), bottom-hole temperatures furnished to the board by stratigraphic test well owners shall be public information immediately upon filing with the board.

History: En. Sec. 21, Ch. 238, L. 1953; amd. Sec. 1, Ch. 224, L. 1955; amd. Sec. 1, Ch. 234, L. 1959; amd. Sec. 1, Ch. 208, L. 1973; amd. Sec. 80, Ch. 253, L. 1974; amd. Sec. 2, Ch. 222, L. 1975; R.C.M. 1947, 60-144.

82-11-126. Availability of facilities to bureau of mines. The board may make available to the authorized personnel or representatives of the bureau of mines and geology such facilities, equipment, records, and cores and cuttings or samples of cores and cuttings as are or may be required by the bureau in the furtherance of its oil and gas research and study. Bottom-hole temperatures of oil and gas wells shall be made available to the bureau of mines and geology by the board in order to facilitate the determination of possible geothermal energy sources.

History: En. Sec. 3, Ch. 32, L. 1957; amd. Sec. 82, Ch. 253, L. 1974; amd. Sec. 3, Ch. 222, L. 1975; R.C.M. 1947, 60-148.

82-11-127 through 82-11-130 reserved.

82-11-131. Privilege and license tax. (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, an operator or producer of oil and gas shall pay an assessment not to exceed 2/10 of 1% of the market value of each barrel of crude petroleum originally produced, saved and marketed, or stored within the state or exported from the state and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported therefrom.

(2) The board shall by order, without prior notice or hearing, fix the amount of the assessment and may from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in this section. The amount of the assessment shall be a percentage factor (not to exceed 100%) of the rate set forth in subsection (1) above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each 10,000 cubic feet of natural gas mentioned in that subsection. A producer of the crude petroleum and natural gas shall pay the assessment on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for himself, as well as for another, including a royalty holder, and the producer shall be reimbursed for the payments made on crude oil and natural gas produced for another in the same manner as he is reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for another under 15-23-607.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973;

amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(1) thru (3); amd. Sec. 7, Ch. 201, L. 1979.

82-11-132. Statements to treasurer and payment of tax. (1) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August, and November of each calendar year, render a true statement to the state treasurer and a duplicate thereof to the board, duly signed and sworn to, of all crude petroleum produced and marketed by him in this state during the preceding quarter and containing such other information as the board may require and shall accompany the statement with the payment to the state treasurer of the assessment provided for in 82-11-131(1) for the period covered by the statement.

(2) Each producer of natural gas in the state shall render like statements to the state treasurer of all natural gas produced and marketed by him in this state and shall make payment of the assessment provided for in 82-11-131(1) at such times and for such periods as may be prescribed by rule of the board.

(3) Any producer carrying on business at more than one place or location in this state may include all those places of business in one statement.

(4) The assessment imposed herein shall be due at the time the oil or natural gas is marketed. Oil or natural gas shall be deemed marketed when it is removed from the property from which it was produced.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(5).

82-11-133. Penalty for late payment. An assessment not paid within the time specified is delinquent, and a penalty of 25% thereof shall be added thereto, and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid. Upon request of the board, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(6).

82-11-134. Permit fees. In addition to the privilege and license tax, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, a person shall secure from the board a drilling permit and shall pay to the board therefor the following amounts:

(1) for each well whose estimated depth is 3,500 feet or less, $25;
(2) from 3,501 feet to 7,000 feet, $75;
(3) 7,000 feet and deeper, $150.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(4).

82-11-135. Money earmarked for board expenses. All money collected under this chapter shall be deposited in the earmarked revenue fund by the state treasurer and shall be used for the purpose of paying all expenses of the board and for no other purpose. All these moneys shall be used by the board subject to the approval of the department of administration and biennial appropriations by the legislature. Income and interest from investment of the board's moneys in the earmarked revenue fund shall be credited to the board.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(7).

82-11-136 through 82-11-140 reserved.

82-11-141. Administrative procedure. (1) Unless otherwise provided, the Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing which shall be effective upon promulgation. An emergency order may not remain in effect more than 15 days.

(4) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(5) Proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published or by a foreman or principal clerk of the newspaper, bulletin, or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The board shall enter its order within 30 days after the hearing.

History: En. Sec. 9, Ch. 238, L. 1953; amd. Sec. 1, Ch. 213, L. 1961; amd. Sec. 71, Ch. 253, L. 1974; R.C.M. 1947, 60-132; amd. Sec. 6, Ch. 19, L. 1979.

82-11-142. Subpoena power — civil actions. (1) If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection shall be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter does not impair, abridge, or delay a cause of action for damages or other civil remedy which a person may have or assert against a person violating this chapter or a rule or order issued under it. A person so aggrieved by the violation may sue for and recover such damages or relief as he otherwise may be entitled to receive. If the board fails to bring suit to enjoin a violation or threatened violation of this chapter or a rule or order of the board within 10 days after receipt of written request to do so by a person who is or will be adversely affected by the violation, the person making the request may bring the suit in his own behalf to restrain the violation or threatened violation in a court in which the board might have brought suit. The board shall be made a party defendant in the suit in addition to the person violating or threatening to violate this chapter or a rule or order of the board, and the action shall proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the board.

(3) If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and, if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with the subpoena and to attend before the board and produce any subpoenaed records, books, and documents for examination and to give his testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court or for refusal to testify therein.

History: En. Sec. 10, Ch. 238, L. 1953; amd. Sec. 72, Ch. 253, L. 1974; R.C.M. 1947, 60-133.

82-11-143. Rehearing. A person adversely affected by a rule or order of the board may within 20 days after its effective date apply to the board in writing for a rehearing. The application for rehearing shall be acted upon within 10 days after its filing, and if granted, the rehearing shall be held without undue delay.

History: En. Sec. 11, Ch. 238, L. 1953; amd. Sec. 73, Ch. 253, L. 1974; R.C.M. 1947, 60-134.

82-11-144. Court review. Any interested person adversely affected by any provision of this chapter or by any rule or order adopted by the board hereunder or by any act done or threatened thereunder may obtain court review and seek relief by a suit for an injunction against the board as defendant, which suit may be instituted in the district court of the county where the board keeps its principal office or in the district court of any county wherein the land involved or any part thereof is situated. The term "interested person", as used herein, shall be interpreted broadly and liberally, especially where the suit involves the right to drill a well or involves some other act which clearly affects the plaintiff even though the effect is indirect. If the act complained of involves a general order for a pool or the right to drill a well therein, a person who owns or has an interest in a well in the pool, which well is capable of producing oil or gas, shall be considered to be prima facie an interested person. The suit shall be given a preferential setting and shall be tried de novo and disposed of as an ordinary civil suit and not upon the record of any hearing before the board. The statute, rule, order, or decision involved in the suit shall be prima facie valid; however, the finding of fact, actual or presumed, made by the board in support of the rule, order, or decision involved in the suit is not binding on the court though supported by evidence introduced at a hearing before the board. The court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any board action. The court shall:

(1) compel board action unlawfully withheld or unreasonably delayed;

(2) hold unlawful and set aside board action, findings, and conclusions found to be:

(a) arbitrary, unreasonable, capricious, and abuse of discretion or otherwise not in accordance with law;

(b) contrary to constitutional right, power, privilege, or immunity;

(c) in excess of statutory jurisdiction, authority, or limitations or short of statutory right;

(d) without observance of procedure required by law; or

(e) unwarranted by the facts; and

(3) consider all the evidence, pass on the credibility of witnesses and the weight to be given their testimony, and resolve such fact issues as may be necessary for decision in the case.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(1).

82-11-145. Injunction or restraining order. (1) A temporary restraining order or temporary injunction of any kind may not be granted against the board and its members or against the attorney general or against an employee of the board, restraining the board and its members or employees or the attorney general from enforcing this chapter or any rule or order made thereunder, until it is shown to the satisfaction of the court that the act done or threatened is probably without sanction of the law or that the provisions of this chapter or the rule or order complained of is probably invalid or unreasonable and that, if enforced against the complaining party, will probably cause an irreparable injury.

(2) With respect to an order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute or of any provision of this chapter or of a rule or order thereunder involved in the suit must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

(3) A temporary restraining order or temporary injunction of any kind against the board or its members or its employees or the attorney general may not be effective until the plaintiff executes a bond with sufficient sureties in such amount and upon such conditions as the court directs. The bond shall be made payable to the state of Montana, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the temporary restraining order or temporary injunction. A person claiming injury must bring suit within 6 months after the date of the final determination of the

validity in whole or in part of the provisions of the chapter or the rule or order, the enforcement of which was enjoined; otherwise the right to bring such suit is forever barred.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(2), (3).

82-11-146. Appeal. An appeal to the supreme court may be taken from any final judgment, decree, or order in the action, as provided in the Montana Rules of Appellate Civil Procedure.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(4).

82-11-147. Violations. Whenever it appears that a person is violating or threatening to violate this chapter or a rule or order of the board, the board shall bring suit against that person in the district court of any county where the violation occurs or is threatened to restrain the person from continuing the violation or from carrying out the threat of violation. In the suit, the court may grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders.

History: En. Sec. 13, Ch. 238, L. 1953; amd. Sec. 75, Ch. 253, L. 1974; R.C.M. 1947, 60-136.

82-11-148. Penalties. A person is guilty of a misdemeanor and shall be subject to a fine of not more than $5,000 or imprisonment in a county jail for a term not exceeding 6 months or to both the fine and imprisonment if that person willfully violates any lawful rule or order of the board or if that person, for the purpose of evading this chapter or any rule or order of the board, knowingly and willfully:

(1) makes or causes to be made a false entry or statement in a report required by this chapter or by a rule or order of the board or a false entry in a record, account, or memorandum required by this chapter or by a rule or order;

(2) omits or causes to be omitted from the record, account, or memorandum full, true, and correct entries as required by this chapter or by a rule or order; or

(3) removes from this state or destroys, mutilates, alters, or falsifies the record, account, or memorandum.

History: En. Sec. 19, Ch. 238, L. 1953; amd. Sec. 78, Ch. 253, L. 1974; R.C.M. 1947, 60-142.

Part 2

Unit Operations

82-11-201. Establishment of well spacing units. (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish well spacing units for a pool as to oil wells or as to gas wells or both, except in those pools which, prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. Spacing units when established shall insofar as possible be of uniform size and shape for the entire pool.

(2) The size and the shape of spacing units shall be such as will result in the efficient and economic development of the pool as a whole, and the size shall be the area that can be efficiently drained by one well.

(3) Subject to this chapter, the order establishing spacing units shall direct that no more than one well may be drilled and produced from the common source of supply on any spacing unit and that the well shall be drilled at a location authorized by the order, with such exception as may be reasonably necessary where it is shown, upon application, notice, and hearing, and the board finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable.

(4) An order establishing spacing units for a pool shall cover all lands then determined or then believed to be underlaid by the pool and may be modified after notice and hearing by the board from time to time to include additional areas subsequently determined to be underlaid by the pool. When found necessary for the prevention of waste, an order establishing spacing units in a pool may be modified after notice and hearing by the board to increase or decrease the size of spacing units in the pool or to permit the drilling of additional wells in the pool on a reasonably uniform plan.

History: **En. Sec. 6, Ch. 238, L. 1953; amd. Sec. 58, Ch. 253, L. 1974; R.C.M. 1947, 60-129.**

82-11-202. Pooling of interest within spacing unit. (1) When two or more separately owned tracts are embraced within a spacing unit or when there are separately owned interests in all or a part of the spacing unit, then the persons owning those interests may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling within the spacing unit, the board, upon the application of an interested person, may enter an order pooling all interests in the spacing unit for the development and operation thereof. The pooling order shall be made after hearing and shall be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive without unnecessary expense his just and equitable share of the oil or gas produced and saved from the spacing unit. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall when produced be considered for all purposes to have been produced from the tract by a well drilled thereon.

(2) The pooling order shall provide for the drilling and operating of a well on the spacing unit and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling, and storage. As to each owner who refuses to pay his share of the costs of drilling and operating the well, the order shall provide for payment of his share of the cost out of and only out of production from the well allocable to his interest in the spacing unit, excluding royalty or other interest not obligated to pay any part of the cost thereof. If a dispute arises as to the cost, the board by order shall determine the proper cost. The order may provide in substance that the owners

who agree to share in the cost of drilling and operating the well are, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of the costs out of the production, and thereafter all of the owners in the spacing unit are entitled to receive their respective shares of the production of the well as their interest may appear after deducting their respective shares of current operating costs.

History: **En. Sec. 7, Ch. 238, L. 1953; amd. Sec. 59, Ch. 253, L. 1974; R.C.M. 1947, 60-130.**

82-11-203. Pooling agreements not in violation of antitrust laws. (1) An agreement for the unit or cooperative development and operation of a field or pool or any part of either or for conducting repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of unit or cooperative operation, including water flooding, is authorized and may be performed.

(2) Such an agreement does not violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade if the agreement is approved by the board as being in the public interest and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas.

History: **En. Sec. 8, Ch. 238, L. 1953; amd. Sec. 60, Ch. 253, L. 1974; R.C.M. 1947, 60-131.**

82-11-204. Hearing on operation of pool as unit. (1) The board, upon the application of persons owning leasehold interests underlying 60% of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field for enhanced recovery purposes as to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(2) At least 60 days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at those persons' last known addresses, of the applicant's intention to make the application. At the same time producers shall be furnished with a plan of unit operations. Upon written request of an operator of a lease which is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing.

History: **En. Sec. 1, Ch. 33, L. 1969; amd. Sec. 1, Ch. 150, L. 1971; amd. Sec. 61, Ch. 253, L. 1974; amd. Sec. 2, Ch. 336, L. 1977; R.C.M. 1947, 60-131.1.**

82-11-205. Board order for unit operation — criteria. The board shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at the hearing, that:

(1) such operation is reasonably necessary to increase the ultimate recovery of oil or gas;

(2) the value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected,

exceeds the estimated additional cost incident to conducting such operations; and

(3) the full areal extent of the pool or pools or part thereof has been reasonably defined and determined by drilling operations.

History: En. Sec. 2, Ch. 33, L. 1969; amd. Sec. 2, Ch. 150, L. 1971; amd. Sec. 62, Ch. 253, L. 1974; R.C.M. 1947, 60-131.2.

82-11-206. Terms and conditions of plan for unit operations. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) a description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. If the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on March 1, 1971, may not be included in the unit area without the written consent of the majority in interest of the working interest owners of the spacing unit and well.

(2) a statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement;

(3) a plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan may not be approved by the board until it has considered the relative value that the share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering this relative value, the board shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(5) a provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus 2% for the service. Recovery of the money advanced plus interest shall be limited to and only shall be recoverable from the owners' share of production. The recovery shall be as follows:

(a) in the case of a field producing oil or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of the owners' average actual rate of production during the 18 months immediately preceding the effective date of the unit; during the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from 100% of the owners' share of production; for purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools as a result of the natural energy therein and without the introduction of an enhanced recovery program;

(b) in the case of a field producing only gas, from 100% of the owners' share of production;

(c) in the case of any enhanced recovery program that is initiated subsequent to a secondary recovery program, the recovery shall be from 75% of the owners' increased share of production from such subsequent program;

(6) a provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner;

(7) a provision whereby the unit operator, after having operated for a minimum period of 2 years, can be challenged by any other owner in the unit, and the challenging owner may succeed to the unit operations upon a showing that:

(a) he can operate more efficiently and economically than the present operator;

(b) he is qualified and financially responsible;

(c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved the challenging owner becoming unit operator; and

(d) the challenged operator does not initiate the conditions of operations of the challenging owner within 60 days of the challenged operator's receipt of the conditions of operations;

(8) the time when the unit operations shall commence and the manner in which and the circumstances under which the unit operations shall terminate; and

(9) such additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights.

History: En. Sec. 3, Ch. 33, L. 1969; amd. Sec. 3, Ch. 150, L. 1971; amd. Sec. 63, Ch. 253, L. 1974; amd. Sec. 3, Ch. 336, L. 1977; R.C.M. 1947, 60-131.3.

82-11-207. Approval of plan for unit operations by persons paying costs. An order of the board providing for unit operations may not become effective unless and until the plan for unit operations prescribed by the board has been approved in writing by those persons who under the board's order will be required to pay at least 80% of the costs of the unit operations and also by the persons owning at least 80% of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved; however, if one owner who is obligated to pay costs of the unit operation owns 80% or more but less than 100%, the approval of that owner and at least one other such owner is required, and if one person entitled to production or proceeds thereof that will be credited to interests which are free of costs owns 80% or more but less than 100%, the approval of that person and at least one other such person is required. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the board shall, upon application and notice, hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of 6 months from the date on which the order providing for unit operations is made, the board shall revoke the order unless for good cause shown the board extends the time.

History: En. Sec. 4, Ch. 33, L. 1969; amd. Sec. 64, Ch. 253, L. 1974; R.C.M. 1947, 60-131.4.

82-11-208. Board orders — amendment. An order providing for unit operations may be amended by an order made by the board in the same manner and subject to the same conditions and notice as an original order providing for unit operations; however, if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the persons owning interests which are free of costs, such as royalties, overriding royalties, and production payments, is not required, and an order of amendment may not change the percentage for the allocation of oil and gas as established for any tract by the original order, except with the consent of all persons owning oil and gas rights in the tract, or change the percentage for the allocation of cost as established for any tract by the original order, except with the consent of all owners in the tract.

History: En. Sec. 5, Ch. 33, L. 1969; amd. Sec. 65, Ch. 253, L. 1974; R.C.M. 1947, 60-131.5.

82-11-209. Units established by previous order. The board may provide by an order for the unit operation of a pool or pools or parts thereof that embrace a unit established by an order of the board made prior to February 13, 1969. The order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in the previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by the order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations is not liable for any unit operating costs incurred prior to the person's entry in the unit. At the time the interest is included in the unit, an equipment inventory shall be made in order to charge the newly committed interest with its proportionate share of capital investment at its then value. An oil-in-storage inventory shall be taken immediately prior to adding the newly committed interest.

History: En. Sec. 6, Ch. 33, L. 1969; amd. Sec. 4, Ch. 150, L. 1971; amd. Sec. 66, Ch. 253, L. 1974; R.C.M. 1947, 60-131.6.

82-11-210. Unit operations — less than whole of pool. An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose and the conduct thereof will have no adverse effect upon other portions of the pool.

History: En. Sec. 7, Ch. 33, L. 1969; R.C.M. 1947, 60-131.7.

82-11-211. Operations considered as done by all owners in unit. (1) All operations, including but not limited to the commencement, drilling, or operation of a well upon any portion of the unit area, shall be considered for all purposes the conduct of those operations upon each tract in the unit area by the several owners thereof. The portion of the unit production allocated to a tract in a unit area shall, when produced, be considered for all purposes to have been actually produced from the tract by a well drilled thereon.

(2) Operations conducted pursuant to an order of the board providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that the obligations cannot be performed because of the order of the board.

History: **En. Sec. 8, Ch. 33, L. 1969; amd. Sec. 67, Ch. 253, L. 1974; R.C.M. 1947, 60-131.8.**

82-11-212. Property rights and operator's lien. That portion of the unit production allocated to any tract and the proceeds from the sale thereof shall be the property and income of the several persons to whom or to whose credit the same are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to 82-11-206(5)(a), have a first and prior lien upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of developing and operating the unit area. Such lien may be perfected and enforced in the same manner as provided in Title 71, chapter 3, part 5, as amended. Upon demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver such allocated share of gas to the owner in kind; but the operator and the other owners of interest shall not be required to bear the cost of providing additional facilities for the delivery of such gas.

History: **En. Sec. 9, Ch. 33, L. 1969; amd. Sec. 5, Ch. 150, L. 1971; R.C.M. 1947, 60-131.9.**

82-11-213. Contract not terminated by board order. A division order or other contract relating to the sale or purchase or production from a tract may not be terminated by the order providing for unit operations but shall remain in force and apply to oil and gas allocated to the tract until terminated in accordance with the provisions thereof.

History: **En. Sec. 10, Ch. 33, L. 1969; amd. Sec. 68, Ch. 253, L. 1974; R.C.M. 1947, 60-131.10.**

82-11-214. Title to oil and gas rights not affected by board order. Except to the extent that the parties affected so agree, an order providing for unit operations does not result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

History: **En. Sec. 11, Ch. 33, L. 1969; amd. Sec. 69, Ch. 253, L. 1974; R.C.M. 1947, 60-131.11.**

82-11-215. Unit operation not restraint of trade. The formation of a unit as provided in 82-11-204 through 82-11-216 and the operation of the unit under order of the board shall not be in violation of any statute of this state relating to trusts, monopolies, contracts, or combinations in restraint of trade.

History: **En. Sec. 12, Ch. 33, L. 1969; amd. Sec. 70, Ch. 253, L. 1974; R.C.M. 1947, 60-131.12.**

82-11-216. No creation of relationship between parties in unit. The formation of such a unit as herein provided will not create a relationship between the parties thereto which shall be deemed to be or constitute a joint endeavor, adventure, undertaking, association, or mining or other partnership.

History: **En. Sec. 13, Ch. 33, L. 1969; R.C.M. 1947, 60-131.13.**

Part 3

Interstate Oil and Gas Conservation Compact

82-11-301. Authorization to join interstate compact for conservation of oil and gas. The governor of the state of Montana is hereby authorized and directed, for and in the name of the state of Montana, to join with other states in the Interstate Compact To Conserve Oil and Gas, which was heretofore executed in the city of Dallas, Texas, on February 16, 1935, and is now deposited with the department of state of the United States and which has been extended with the consent of congress to September 1, 1947.

History: **En. Sec. 1, Ch. 121, L. 1945; R.C.M. 1947, 60-601.**

82-11-302. Interstate oil and gas compact. The Interstate Compact To Conserve Oil and Gas referred to in the above section, and which it is hereby proposed to enter and to extend by agreement reads as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

Article I

This agreement may become effective within any compacting state at any time as prescribed by that state and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

Article II

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

Article III

(1) Each state bound hereby agrees that within a reasonable time it will enact laws or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) the operation of any oil well with an inefficient gas-oil ratio;

(b) the drowning with water of any stratum capable of producing oil or gas or both oil and gas in paying quantities;

(c) the avoidable escape into the open air or the wasteful burning of gas from a natural gas well;

(d) the creation of unnecessary fire hazards;

(e) the drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;

(f) the inefficient, excessive, or improper use of the reservoir energy in producing any well.

(2) The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

Article IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

Article V

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof or create or perpetuate monopoly or to promote regimentation but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

Article VI

(1) Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the interstate oil compact commission, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial, it shall report its findings and recommendations to the several states for adoption or rejection.

(2) The commission shall have the power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

(3) No action shall be taken by the commission except:

(a) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and

(b) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half year to the daily average production of the compacting states during said period.

Article VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

Article VIII

(1) This compact shall expire September 1, 1947. But any state joining herein may, upon 60 days' notice, withdraw herefrom.

(2) The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the department of state of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

(3) This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

(4) Done in the city of Dallas, Texas, this sixteenth day of February, 1935.

(Originally signed by the representatives of the following states: Oklahoma, Texas, New Mexico, Colorado, Illinois, Michigan, California, Arkansas, and Kansas.)

History: En. Sec. 2, Ch. 121, L. 1945; R.C.M. 1947, 60-602.

82-11-303. Extension of expiration date. The governor of Montana is further authorized and empowered, for and in the name of the state of Montana, to execute agreements for the further extension of the expiration date of the Interstate Compact To Conserve Oil and Gas and to determine if and when it shall be for the best interest of the state of Montana to withdraw from said compact upon 60 days' notice as provided by its terms. In the event he shall determine that the state should withdraw from said compact, he shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Montana from said compact.

History: En. Sec. 3, Ch. 121, L. 1945; R.C.M. 1947, 60-603.

82-11-304. Governor as member of interstate oil compact commission. The governor shall be the official representative of the state of Montana on the interstate oil compact commission, provided for in the Interstate Compact To Conserve Oil and Gas, and shall exercise and perform for the state of Montana all the powers and duties as a member of the interstate oil compact commission; provided that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state of Montana as a member of said commission. Said assistant representative shall take the oath of office prescribed by The Constitution of the State of Montana, which shall be filed with the secretary of state.

History: En. Sec. 4, Ch. 121, L. 1945; R.C.M. 1947, 60-604.

82-11-305. Limitation on power of representative. Nothing in this part shall be construed as granting any power to the representative of the state of Montana in his private or official capacity or to the interstate oil compact commission to prorate, allocate, regulate, or control oil or gas production or refined products thereof within the state of Montana or the markets therefor and shall not have the effect or be construed as in any manner surrendering to the federal government any rights over or in the production, sale, or transportation of oil or gas or the refined products thereof in the state of Montana; nor shall anything in this part be understood or construed to bind or obligate the state of Montana to enact any new legislation or to amend or alter any laws heretofore enacted and now in force pertaining to the oil and gas industries in Montana.

History: En. Sec. 5, Ch. 121, L. 1945; R.C.M. 1947, 60-605.

82-11-306. Expenses of representative. The representative or the assistant representative appointed by the governor of the state of Montana to the oil compact commission shall be allowed and paid his reasonable expenses while engaged in the performance of his official duties, and his expenses and all other expense incurred in connection with the interstate oil compact and the interstate oil compact commission shall be paid out of the board of oil and gas conservation revenue fund in accordance with the provisions of 82-11-135, as amended.

History: En. Sec. 6, Ch. 121, L. 1945; amd. Sec. 33, Ch. 39, L. 1977; R.C.M. 1947, 60-606.

CHAPTERS 12 THROUGH 14

RESERVED

CHAPTER 15

REGULATION OF PETROLEUM PRODUCTS

Part 1 — Regulation of Manufacture and Distribution

Section

82-15-101. Definitions.
82-15-102. Enforcement of part — rules.
82-15-103. Standards for petroleum products.
82-15-104. Department authorized to employ laboratory for testing.
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Part 1

Regulation of Manufacture and Distribution

82-15-101. Definitions. As used in this part the following definitions apply:

(1) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(2) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(3) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures thereof: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

(4) "Mislabeled" means a package label or dispensing device of a product which bears any statement, design, or device regarding the same or regarding ingredients or substances therein or regarding the properties, quality, or kind of such products, which is false or misleading in any manner.

(5) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

(6) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (3).

(7) "Sell" and "sale" includes barter and exchange.

History: En. 60-234 by Sec. 1, Ch. 77, L. 1977; R.C.M. 1947, 60-234.

82-15-102. Enforcement of part — rules. This part shall be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

History: En. 60-235 by Sec. 2, Ch. 77, L. 1977; R.C.M. 1947, 60-235.

82-15-103. Standards for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, shall be determined by the department and shall be based upon nationally recognized standards and specifications such as are published from time to time by the American society for testing materials. When so determined by the department and adopted as rules, such standards and specifications are the standards and specifications for such products sold in this state and official tests of such products shall be based upon them.

History: En. 60-236 by Sec. 3, Ch. 77, L. 1977; R.C.M. 1947, 60-236.

82-15-104. Department authorized to employ laboratory for testing. The department may employ a laboratory having sufficient facilities to make tests of petroleum products as required and pay reasonable compensation for the analyses and tests made by it.

History: En. 60-237 by Sec. 4, Ch. 77, L. 1977; R.C.M. 1947, 60-237.

82-15-105. Licenses and fees. (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until a license has been issued to him by the department. The license shall be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this part.

(2) The fee for this license shall be determined as follows and depends upon the number of devices utilized by the dealer:

(a) each gasoline pump, diesel pump, or fuel oil pump measuring device—$3;

(b) each petroleum vehicle tank meter or bulk petroleum meter of 2 inches (5.08 centimeters) and under—$10;

(c) each bulk petroleum meter over 2 inches (5.08 centimeters)—$15;

(d) each liquefied petroleum liquid meter—$15;

(e) each vapor meter—$3;

(f) each petroleum and liquefied petroleum vehicle tank up to and including 2,000 gallons (7,570 liters)—$20;

(g) each petroleum and liquefied petroleum vehicle tank over 2,000 gallons (7,570 liters)—$20 plus $4 for each additional 1,000 gallons (3,785 liters).

(3) All licenses are annual and nontransferable as to person or location and expire on December 31 of each year. There is an additional charge of 50% on all license fees that are not paid before March 1 of each year in which the vehicle tank, meter, or measuring device is in use. If the fee is not paid, the equipment shall be sealed and removed from service by the department. It is unlawful for anyone to use a device so removed from service or to break the seal until all fees have been paid.

History: En. 60-238 by Sec. 5, Ch. 77, L. 1977; R.C.M. 1947, 60-238.

82-15-106. Refusing, suspending, and revoking licenses — hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after hearing noticed for not less than 10 days. Violation of any provision of this part or any lawful order or rule of the department is cause for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on those terms which the department considers just and proper.

History: En. 60-239 by Sec. 6, Ch. 77, L. 1977; R.C.M. 1947, 60-239.

82-15-107. Inspections, sampling, and tests by department to insure compliance with part. (1) For the purpose of obtaining information regarding suspected violation of this part, the department has access to all places where the commodities subject to regulation under this part are sold, offered for sale or kept for sale, manufactured, transported, or stored or where the books, papers, records, or documents relative to those transactions are kept and may inspect and copy them at any place in this state.

(2) The department may sample, inspect, and test any of the commodities subject to this part upon tendering payment for them, whether they originate at points outside the state or otherwise and whether they are in transport or at rest in places where they are to be sold.

History: **En. 60-240 by Sec. 7, Ch. 77, L. 1977; R.C.M. 1947, 60-240.**

82-15-108. Approved measure required for part delivery. Part of a compartment delivery may be made only by an approved, calibrated, and sealed meter or an approved measure. Gauge stick measurement is not permitted. All tank markers must be positioned and sealed as provided by the department. The department shall fix by rule fees for retesting meters or measuring devices or vehicle tanks used for distribution by petroleum or liquefied petroleum dealers and for any other special service rendered.

History: **En. 60-241 by Sec. 8, Ch. 77, L. 1977; R.C.M. 1947, 60-241.**

82-15-109. Full compartment sales — approval of meter. Full compartment sales or deliveries may only be made in a manner that shall be provided by the department by rule. All other sales or deliveries may only be made through a meter which has been approved, calibrated, and sealed by the department or by weight, unless otherwise provided by the department.

History: **En. 60-242 by Sec. 9, Ch. 77, L. 1977; R.C.M. 1947, 60-242.**

82-15-110. Unlawful acts. It is unlawful to:

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the same has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department's seal without written consent from the department;

(3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the department under 82-15-108;

(4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by 82-15-109;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor the measurement of which has not been temperature corrected to 60 degrees F by means of an automatic compensating device which has been approved, calibrated, and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the commodities in all respects meet the tests and standards prescribed;

(7) sell, offer, or expose for sale any petroleum product which is adulterated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended.

History: **En. 60-243 by Sec. 10, Ch. 77, L. 1977; R.C.M. 1947, 60-243.**

82-15-111. Penalty for violations. A person who violates any of the provisions of this part or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than $10 or more than $1,000 and shall be punished for any subsequent offense by a fine of not less than $50 or more than $5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment.

History: En. 60-244 by Sec. 11, Ch. 77, L. 1977; R.C.M. 1947, 60-244.

82-15-112. Injunction against violations. The department may apply to any court of competent jurisdiction for a temporary or permanent injunction, or both, restraining any person for violating any provision of this part or any rule promulgated by the department pursuant to this part.

History: En. 60-245 by Sec. 12, Ch. 77, L. 1977; R.C.M. 1947, 60-245.

Part 2

Price Discrimination

82-15-201. Standard petroleum product defined. The term "standard petroleum product" as used herein refers to and includes gasoline, fuel oil, distillates, greases, and lubricating oils.

History: En. Sec. 2, Ch. 111, L. 1935; re-en. Sec. 4193.2, R.C.M. 1935; R.C.M. 1947, 60-402.

82-15-202. Purpose. This part is intended to compel a person, firm, company, association, or corporation doing business in the state of Montana and engaged in the selling of and dealing in standard petroleum products to treat a customer in one part of the state of Montana on an equal basis with a customer in another part of the state or in the nearest adjoining state and to promote the uniform application of the law of the state of Montana providing a tax on gasoline used by a motor vehicle when traveling over a public highway. This part shall be liberally construed to accomplish those purposes.

History: En. Sec. 3, Ch. 111, L. 1935; re-en. Sec. 4193.3, R.C.M. 1935; R.C.M. 1947, 60-403; amd. Sec. 8, Ch. 201, L. 1979.

82-15-203. Discrimination in price of petroleum products. (1) Any person, firm, company, association, or corporation, either domestic or foreign, doing business in the state of Montana and engaged in the selling of any standard petroleum product that shall demand or collect from any person or customer a higher price for any standard petroleum product in one part of the state of Montana than the price being demanded or collected at substantially the same time by such person, firm, company, association, or corporation from other persons or customers in another part of the state of Montana or in the nearest adjoining state for a like article of standard petroleum product shall be guilty of discrimination which is hereby declared to be a fraud and the agents or officers of such person, firm, company, association, or corporation participating, guilty of a misdemeanor.

(2) In the trial of an action under the provisions of this part, in the determination of the justification of the price demanded or collected by a person, firm, company, association, or corporation charged with a violation of the provisions of this part, transportation, quantity of sales, emergencies, cost of doing business, or similar differences under the respective conditions may be offered as a matter of defense or justification for the differences in price demanded or collected. When competent evidence is offered in the trial of any action under this part of a demand for or the receipt of a higher price

for any standard petroleum product in the state of Montana by any person, firm, company, association, or corporation than such person, firm, company, association, or corporation demanded, collected, or received at substantially the same time for the same or a similar article of standard petroleum product in another part of the state of Montana or in the nearest adjoining state, the burden of proof shall then be upon such person, firm, company, association, or corporation or agents or officers on trial to prove that the difference in the price demanded or collected was justified.

History: En. Sec. 1, Ch. 111, L. 1935; re-en. Sec. 4193.1, R.C.M. 1935; R.C.M. 1947, 60-401.

82-15-204. Investigation of complaints — revocation of license. If complaint shall be made to the attorney general that any person, firm, company, association, or corporation is guilty of discrimination as defined by this part, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit or license of such person, firm, company, association, or corporation, as the case may be, and to permanently enjoin such person, firm, company, association, or corporation from doing business in this state. If in such action the court shall find that such person, firm, company, association, or corporation is guilty of discrimination as defined by this part, such court shall annul the charter or revoke the permit or license of such person, firm, company, association, or corporation and may permanently enjoin it or them from transacting business in this state.

History: En. Sec. 4, Ch. 111, L. 1935; re-en. Sec. 4193.4, R.C.M. 1935; R.C.M. 1947, 60-404.

82-15-205. County attorney to prosecute violations. If any person shall present to the county attorney of any county in the state of Montana, in which county such discriminatory acts of any person, firm, company, association, or corporation shall have been committed, a sworn written statement of the price paid, the date, and the parties selling and buying and reasonably reliable information of the price demanded or collected by such person, firm, company, association, or corporation for a corresponding or similar article of standard petroleum product sold or offered for sale in another part of the state of Montana or in the nearest adjoining state by such person, firm, company, association, or corporation, then it shall be the duty of such county attorney to promptly investigate and either commence and prosecute an action or furnish the informant with a written statement of his reasons for not commencing and prosecuting an action under this part.

History: En. Sec. 4-A, Ch. 111, L. 1935; re-en. Sec. 4193.5, R.C.M. 1935; R.C.M. 1947, 60-405.

82-15-206. Penalty. Any person, firm, company, association, or corporation violating any of the provisions of this part shall be guilty of a misdemeanor and shall be punishable by a fine of not exceeding $500.

History: En. Sec. 5, Ch. 111, L. 1935; re-en. Sec. 4193.6, R.C.M. 1935; R.C.M. 1947, 60-406.

82-15-207. Liability for civil and exemplary damages. In addition to the penalty above prescribed, any customer of such person, firm, company, association, or corporation may bring a civil action in any county in which such offending person, firm, company, association, or corporation may be doing business and recover therein not only actual damages for violation of this part but also exemplary damages for such reasonable sum as the jury may deem proper punishment for the unlawful practice of discrimination as herein defined.

History: En. Sec. 6, Ch. 111, L. 1935; re-en. Sec. 4193.7, R.C.M. 1935; R.C.M. 1947, 60-407.

TITLES 83 AND 84

RESERVED

TITLE 85

WATER USE

Ch.
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2. Surface and Groundwater.
3. Atmospheric Water — Weather Modification.
   Chapter 4 reserved.
5. Water Commissioners.
6. Water Users' Associations.
7. Irrigation Districts.
8. Drainage Districts.
9. Conservancy Districts.
   Chapters 10 through 14 reserved.
15. Dams and Reservoirs.
16. Wharves and Docks.
   Chapters 17 through 19 reserved.
20. Yellowstone River Compact.

CHAPTER 1

WATER RESOURCES

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Part 1

General Provisions

85-1-101. Policy considerations. It is hereby declared as follows:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural resources and conservation, shall coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources.

(4) The development and utilization of water resources and the efficient, economic distribution thereof are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to coordinate local, state, and federal water resource development and utilization plans and projects through a single agency of state government, the department of natural resources and conservation.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound coordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) Any attempt to gain control of or speculate on large quantities of ground water of the state of Montana is not in the interest of the people and is to be restricted.

(10) To achieve these objectives and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, coordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan".

History: En. Sec. 2, Ch. 158, L. 1967; amd. Sec. 119, Ch. 253, L. 1974; R.C.M. 1947, 89-101.2; amd. Sec. 1, Ch. 631, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 631, L. 1979, provided: "This act is effective on passage and approval." Approved May 7, 1979.

85-1-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(2) "Cost of works" means the cost of construction; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction; the cost of all water rights acquired or exercised by the department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(5) "Project" means any one of the works herein defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(6) "Works" means all property, rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems and includes all such works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection.

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; R.C.M. 1947, 89-102(part).

85-1-103. Interpretation of title. The object of this title is to promote the prosperity and welfare of the people of Montana through the sound management of the state's water resources, and its provisions are to be given a liberal interpretation.

History: En. Sec. 66, Ch. 146, L. 1909; re-en. Sec. 7262, R.C.M. 1921; re-en. Sec. 7262, R.C.M. 1935; amd. Sec. 38, Ch. 460, L. 1977; R.C.M. 1947, 89-2109.

85-1-104 through 85-1-110 reserved.

85-1-111. Public ways. Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and such transportation. This section shall not be construed so as to affect or impair, in any manner, any rights acquired prior to July 1, 1901, by any person, association of persons, or corporation. The right of any person, association of persons, or corporation to take and use any water, as now provided by law, from any stream or streams for the purpose of irrigation or any beneficial or industrial pursuit shall not be abridged.

History: En. Sec. 2570, Pol. C. 1895; amd. Sec. 1, p. 126, L. 1901; re-en. Sec. 1326, Rev. C. 1907; re-en. Sec. 1604, R.C.M. 1921; Cal. Pol. C. Sec. 2348; re-en. Sec. 1604, R.C.M. 1935; R.C.M. 1947, 89-501.

85-1-112. Navigable waters. (1) All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States

and all rivers and streams which are navigable in fact are hereby declared navigable.

History: En. Secs. 1, 2, Ch. 95, L. 1933; re-en. Secs. 3717.1, 3717.2, R.C.M. 1935; R.C.M. 1947, 26-336, 26-337.

85-1-113 through 85-1-120 reserved.

85-1-121. Out-of-state use of water. None of the waters in the state of Montana shall ever be appropriated, diverted, impounded, or otherwise restrained or controlled while within the state for use outside the boundaries thereof, except pursuant to a petition to and an act of the legislature of the state of Montana permitting such action. Any appropriation, diversion, impounding, restraining, or attempted appropriation, diversion, impounding, or restraining contrary to the provisions of this section shall be null and void. All officers, agents, agencies, and employees of the state are prohibited from knowingly permitting, aiding, or assisting in any manner such unauthorized appropriation, diversion, impounding, or other restraint. It shall be unlawful for any person, persons, or corporation, directly or indirectly, personally or through agents, officers, or employees, either to attempt to so appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state for use outside thereof, except in accordance with the terms of this section.

History: En. Sec. 1, Ch. 220, L. 1921; re-en. Sec. 7135, R.C.M. 1921; re-en. Sec. 7135, R.C.M. 1935; R.C.M. 1947, 89-846.

85-1-122. Clark Fork River. The waters of the Clark Fork River may be impounded or restrained within the state of Montana for a distance not exceeding 25 miles from the Idaho-Montana boundary line by a dam located on said river in the state of Idaho and constructed by any person, firm, partnership, or corporation authorized to do business in the state of Montana. Any present or future appropriations of water in the watershed in the state of Montana for irrigation and domestic use above said dam shall have priority over water for power use at said dam.

History: En. Sec. 1, Ch. 3, L. 1951; R.C.M. 1947, 89-856.

Part 2

Administration

85-1-201. Rules of board. The board may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter.

History: En. 89-102.1 by Sec. 121, Ch. 253, L. 1974; R.C.M. 1947, 89-102.1.

85-1-202. Department actions subject to board approval. The department may not acquire by appropriation or otherwise a water right or interest therein and may not acquire real property or an interest therein (except rights of access for the purpose of construction, operation, or maintenance of works) or mortgage or otherwise create a lien on the same or dispose of in any manner water rights or real property or interest therein without prior approval of the board. The department may not construct or cause to be constructed or contract for the construction of works or projects without prior approval of the board. The department may not loan funds to a person or water user association for the purpose of constructing or maintaining works without prior approval of the board.

History: En. Sec. 2, Ch. 279, L. 1965; amd. Sec. 122, Ch. 253, L. 1974; R.C.M. 1947, 89-103.2.

85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare therefrom a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) The department shall formulate and, with the approval of the board, adopt and from time to time amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan shall set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan or any section thereof, the department shall hold public hearings in the state or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of the hearing or hearings shall be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section thereof at least 30 days prior to the hearing.

(3) The department shall submit to each general session of the legislature the state water plan or any section thereof or amendments, additions, or revisions thereto which the department has formulated and adopted.

(4) The department shall prepare a continuing inventory of the groundwater resources of the state. The groundwater inventory shall be included in the comprehensive water resources inventory described in subsection (1) above but shall be a separate component thereof.

(5) The department shall publish the comprehensive inventory, the state water plan, the groundwater inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

History: En. Sec. 5, Ch. 158, L. 1967; amd. Sec. 138, Ch. 253, L. 1974; R.C.M. 1947, 89-132.1(1) thru (5).

85-1-204. Department powers over state waters. (1) The department, with the approval of the board, may sell, lease, and otherwise dispose of all waters which may be impounded under this chapter, and the water may be sold for the purpose of irrigation, development of power, watering of stock, or any other purpose. To the extent that it may be necessary to carry out this chapter and subject to a compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as may be necessary to appropriate and conserve the same for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the waters of this state which it may acquire, with the approval of the board, by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction which purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, and equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it considers appropriate and make findings of the date and quantity of appropriation and use of all claimants which the department will recognize and observe in diverting the waters which it owns. The department may police and distribute to the owner of the recognized appropriation the waters due him upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners. The owner of a prior right contending that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream it may divert or authorize the diversion at any point on the stream or any portion thereof when it is done without injury to a prior appropriator.

History: **Ap. p. Sec. 21, Ch. 35, Ex. L. 1933; re-en. Sec. 349.22, R.C.M. 1935; amd. Sec. 136, Ch. 253, L. 1974; amd. Sec. 1, Ch. 255, L. 1975; amd. Sec. 4, Ch. 460, L. 1977; Sec. 89-125, R.C.M. 1947; Ap. p. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; Sec. 89-118, R.C.M. 1947; R.C.M. 1947, 89-118(part), 89-125(1) thru (6).**

85-1-205. Acquisition of water in Fort Peck Reservoir. The department may acquire water by purchase option or agreement with the federal government from the Fort Peck Reservoir for the purpose of sale, rent, or distribution for industrial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate.

History: **En. Sec. 21, Ch. 35, Ex. L. 1933; re-en. Sec. 349.22, R.C.M. 1935; amd. Sec. 136, Ch. 253, L. 1974; amd. Sec. 1, Ch. 255, L. 1975; amd. Sec. 4, Ch. 460, L. 1977; R.C.M. 1947, 89-125(7).**

85-1-206. Construction of works by department. (1) Subject to the approval of the board, the department may construct works, the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant to aid in financing the construction from the United States or any instrumentality or agency thereof and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of maintaining, repairing, and operating it, and the revenues to be derived therefrom. A project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing, and operating it and to pay the principal and interest of revenue bonds which may be issued for the cost of the project; however, in connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of those bonds or of the trust indenture, resolution, or other security therefor.

(2) Should the bid of the lowest responsible bidder on any capital improvement associated with public works exceed the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water user association, whenever an association is involved, before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

(3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects designed for those purposes. The projects to be finally constructed shall qualify as parts of the statewide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance, and repair and the amortization of the cost of the construction. The failure of the board to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security therefor.

History: En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; re-en. Sec. 349.5, R.C.M. 1935; amd. Sec. 1, Ch. 278, L. 1973; amd. Sec. 124, Ch. 253, L. 1974; amd. Sec. 1, Ch. 460, L. 1977; R.C.M. 1947, 89-105(1) thru (3).

85-1-207. Determination of costs of works. The department, in determining the cost of works, may make nonreimbursable allowances for costs of public benefits, including but not limited to irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; R.C.M. 1947, 89-102(part).

85-1-208. Construction across streams, highways, or other obstacles. (1) The department may construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways, canals, ditches, or flumes in such manner as to afford security to life and property. The department shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. A company whose railroads are intersected or crossed by the works shall unite with the department in forming the intersection and crossing. If the railroad company and the department or the owners and controllers of the property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor or the points or the manner of the crossing or intersections, the amount shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) This section does not require the payment to the state or any subdivision thereof of a sum for the right to cross a public highway with the works. A right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain the works over and through the lands which are the property of this state.

History: **En. Sec. 1, Ch. 69, L. 1937; amd. Sec. 125, Ch. 253, L. 1974; R.C.M. 1947, 89-106.**

85-1-209. Acquisition of property by department. (1) The department, subject to the approval of the board under 85-1-202, may acquire by purchase or exchange upon terms and conditions and in a manner it considers proper and acquire by condemnation, in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned shall be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court having jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

(2) In condemnation proceeding brought under the powers of eminent domain for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be acquired as disclosed by the public records shall be made parties, and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them, the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) The taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects such part of those water rights as it may determine. Upon the adoption of the order, those water rights shall be considered a part of each of the works or projects to the extent that the water rights have been so apportioned or allocated thereto respectively.

History: **(1) thru (3)En. Sec. 4, Ch. 35, Ex. L. 1933; re-en. Sec. 349.4, R.C.M. 1935; amd. Sec. 123, Ch. 253, L. 1974; Sec. 89-104, R.C.M. 1947 (4)En. Sec. 2, Ch. 3, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; Sec. 89-102, R.C.M. 1947; R.C.M. 1947, 89-102(7), 89-104.**

85-1-210. Disposal of property by department to other public bodies. In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department, with the approval of the board, may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department may sell or otherwise dispose of a waterworks system which is not operated for the purpose of irrigation or development of power, after the discharge of all of the bonds issued by the board to finance the construction or acquisition thereof and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds; however, no such sale or other disposition may be made except to a municipality, political subdivision, authority, or other public body of the state.

History: En. Sec. 6, Ch. 95, L. 1935; re-en. Sec. 349.24, R.C.M. 1935; amd. Sec. 137, Ch. 253, L. 1974; R.C.M. 1947, 89-127.

85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under such general rules and upon such terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall provide that, in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(5) Subject to the approval of the board under 85-1-202, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, or property when it determines that they are no longer needed for the purposes of this chapter or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the department as to the market value of

rights-of-way, easements, or property to be sold, transferred, abandoned, or otherwise disposed of.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(1), (3), (5).

85-1-212. Settlement of disputes over water contracts. (1) A person aggrieved by a decision of the department to terminate any contract under 85-1-211(4) may appeal to the board and be heard thereon by filing written notice of the appeal with the department within 10 days after receiving notice of termination of the contract from the department. The termination of the contract is stayed if an appeal is taken.

(2) If a dispute arises between the department and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract or under a contract for the construction or repair of works, that party may appeal to the board for a hearing thereon and a resolution of the dispute by filing written notice of the appeal with the department within 30 days after the final decision of the department regarding the dispute.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(4).

85-1-213. Institution of court actions by department. The department may institute in any court any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights-of-way for diversion and distributing canals, and lateral ditches and other means of distribution of water and may also in any court institute, maintain, and prosecute to final determination actions, suits, and special proceedings necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for the reservoir, diversion and distributing canals, lateral ditches, and other means of distribution of the water. The department may join owners of waters appropriated by a person, association, or corporation from the streams of the state so that adjudication may be had of all surplus water upon all the streams and sources of water supply of a project constructed by the department. All costs and expenses of the actions, suits, or special proceedings shall be paid by the department out of funds provided under this chapter.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; R.C.M. 1947, 89-118(2).

85-1-214. Exercise of department powers — scope of jurisdiction. The department may exercise any of its powers in:

(1) an adjoining state, unless the exercise of that power is not permitted under the laws of that state or of the United States;

(2) a national forest or public domain of the United States adjoining or located in the state of Montana, unless the exercise of those powers is not permitted under the laws of the United States;

(3) an adjoining country, unless the exercise of those powers is not permitted under the laws of that country or of the United States or under the treaties between that country and the United States.

History: **En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; re-en. Sec. 349.5, R.C.M. 1935; amd. Sec. 1, Ch. 278, L. 1973; amd. Sec. 124, Ch. 253, L. 1974; amd. Sec. 1, Ch. 460, L. 1977; R.C.M. 1947, 89-105(4).**

85-1-215. Department duties — records and operations. The department shall keep full and complete accounts concerning all matters and things relating to the works and annually shall prepare balance sheets and income and profit and loss statements showing the financial condition of each project and file copies thereof with the secretary of state. All books and papers pertaining to all matters provided for in this chapter shall at all reasonable times be open to the inspection of any party interested or any citizen of the state. Except as otherwise provided in this chapter, the department has full charge and control of the construction, operation, and maintenance of the works and the collection of all rates, charges, and revenues of whatsoever character therefrom. The department shall proceed immediately with the construction of the works upon funds being made available therefor and shall prosecute the works to completion as rapidly as possible.

History: **En. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; R.C.M. 1947, 89-118(part).**

85-1-216. Limitations on liabilities and obligations. No liability or obligation shall be incurred under this chapter beyond the extent to which money is provided under this chapter.

History: **En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(part).**

85-1-217. Restoration and repair of damaged property. All public or private property damaged or destroyed in carrying out the powers granted under this chapter shall be restored or repaired and placed in their original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided by this chapter.

History: **En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(part).**

85-1-218. Employment of county surveyors. Whenever deemed practical the department may employ county surveyors in the assistance and preparation of surveys and investigations conducted by the department.

History: **En. Sec. 2, Ch. 169, L. 1935; re-en. Sec. 349.64, R.C.M. 1935; amd. Sec. 80, Ch. 147, L. 1963; amd. Sec. 154, Ch. 253, L. 1974; R.C.M. 1947, 89-402(part).**

85-1-219 and 85-1-220 reserved.

85-1-221. Contracts with the United States. The department may enter into contracts and leases with the United States, its instrumentalities or agencies, for the purpose of financing the construction of any works authorized by this chapter and may in those contracts or leases authorize the United States, its instrumentalities, or agencies to supervise and approve the construction, maintenance, and operation of the works or any project or portion thereof, until such times as any money expended, advanced, or loaned by said United States, its instrumentalities, or agencies and agreed to be repaid thereto by the department is fully repaid. It is a purpose and intent of this chapter that the department may accept cooperation from the United States, its instrumentalities, and agencies in the construction, maintenance, and operation and in financing the construction of any works authorized by this chapter, and the department may do all things necessary in order to avail itself of that aid, assistance, and cooperation under federal legislation now or hereafter enacted by congress.

History: **En. Sec. 13, Ch. 35, Ex. L. 1933; re-en. Sec. 349.14, R.C.M. 1935; amd. Sec. 131, Ch. 253, L. 1974; R.C.M. 1947, 89-117.**

85-1-222. Conformity to federal regulations authorized. For the purpose of obtaining financial aid from the United States of America, the department may adjust the plans and operation of a project, created under this chapter, to conform to the laws and regulations of the federal government and the supervision of any agency constituted under that authority and may exercise those powers whenever conferred.

History: **En. Sec. 20, Ch. 35, Ex. L. 1933; amd. Sec. 135, Ch. 253, L. 1974; R.C.M. 1947, 89-124.**

85-1-223. Negotiations with other states by the department. The department may negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution, and allocation of the water of any stream or streams flowing from Montana into such other states or flowing from such other states into Montana. It shall cooperate with other states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of the compacts. This authority and the duties hereby imposed are limited to the preparation and proposal of the compact and the compact or agreement is not binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in the compact.

History: **En. Sec. 1, Ch. 27, Ex. L. 1933; re-en. Sec. 1956.1, R.C.M. 1935; amd. Sec. 2, Ch. 280, L. 1965; Sec. 81-2009, R.C.M. 1947; amd. and redes. 89-142 by Sec. 112, Ch. 253, L. 1974; R.C.M. 1947, 89-142.**

85-1-224. Contracts with state agencies and counties. (1) A state agency or the boards of county commissioners having jurisdiction over any lands which may require the use of any water or water rights owned or controlled by the department or the United States or its agencies may enter into:

(a) such contracts as are necessary with the department, the United States, or agencies of the United States or others for the purchase of water or water rights needed for those lands; and

(b) any contracts as necessary or expedient, similar to contracts executed by individuals or others, to secure for the state, state institutions, counties, and state school and county lands the benefits of the water or water rights, which obligations may be similar to those of persons who become stockholders in corporations or who may agree to purchase and pay for water for irrigation purposes.

(2) These contracts may include agreements that the state and counties shall be subject to the same charges and payments as are other water users

within the projects; however, none of those charges, payments, or costs shall constitute a lien against the state's interest in the lands.

(3) The obligations provided for in this section to be incurred upon behalf of the counties and the state shall not be in the nature of general obligations by either said counties or the state of Montana but shall constitute liens only upon such water or water rights purchased for the benefit of such lands.

History: (1), (2)En. Sec. 2, Ch. 97, L. 1935; re-en. Sec. 349.37, R.C.M. 1935; amd. Sec. 139, Ch. 253, L. 1974; Sec. 89-140, R.C.M. 1947; (3)En. Sec. 3, Ch. 97, L. 1935; re-en. Sec. 349.38, R.C.M. 1935; Sec. 89-141, R.C.M. 1947; R.C.M. 1947, 89-140, 89-141.

Part 3

Finance

85-1-301. Water conservation revenue bonds. (1) The board is hereby authorized to provide, by resolution, at one time or from time to time, for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, as hereinabove defined, of any one or more such public works, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment. Such bonds shall mature at such time or times, not more than 40 years from their date or dates, as may be fixed by such resolution but may be made redeemable before maturity at the option of the state, to be exercised by the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the rate of interest such bonds shall bear, not exceeding 6% per annum; the time or times of payment of such interest; the form of the bonds and the interest coupons to be attached thereto; and the manner of executing the bonds and coupons and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the state.

(2) Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this section and 85-1-303 may be issued and sold from time to time and in such amounts as may be determined by the board, and the board may sell the bonds in such manner and for such price as it may determine to be for the best interests of the state, but no such sale shall be made for less than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of 6% per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of the works and shall be checked out in such manner and under such restrictions, if any, as the board may provide.

(3) Each resolution providing for the issuance of bonds shall set forth the project or projects for which the bonds are to be issued, and the bonds authorized by each such resolution shall constitute a separate series. The bonds of each series shall be identified by a series letter or letters and may be sold and delivered at one time or from time to time.

History: En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(1), (3), (5).

85-1-302. Limitations on state liability. All bonds issued under 85-1-301 and 85-1-303 shall contain a statement on their face that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter set forth. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities. Such bonds shall not constitute or be a debt, liability, or obligation of the state and shall be secured only by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale, or other disposition of the works, property, and facilities to be acquired out of the proceeds of such bonds.

History: En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(2).

85-1-303. Procedure in case of insufficient bond proceeds. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the trust indenture hereinafter mentioned or in the resolution authorizing the bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund, without preference or priority of the bonds first issued for the same works. If the proceeds of bonds issued for any such works shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for the payment of principal and interest of such bonds. Prior to the preparation of definitive bonds, the board may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified and required by this chapter or by the constitution of the state.

History: En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(4).

85-1-304. Lien upon bond proceeds. All moneys received from any bonds issued pursuant to 85-1-301 and 85-1-303 shall be applied solely to the payment of the cost of the works or to the appurtenant sinking fund and to the "administration fund", as hereinafter provided, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustee hereinafter provided for in respect of such bonds.

History: En. Sec. 7, Ch. 35, Ex. L. 1933; R.C.M. 1947, 89-110.

85-1-305. Use of trust indenture to secure bonds. In the discretion of the board, a series of the bonds may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

History: En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(1).

85-1-306. Provisions for protecting bondholders. Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board, and the department in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works and the custody, safeguarding, and application of all moneys. It may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the department and satisfactory to the original purchasers of the bonds issued therefor, their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and revenues of the works or other moneys pertaining thereto shall be satisfactory to the purchasers, successors, assigns, or nominees. The resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the works affected by the indenture.

History: En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(2).

85-1-307. Provisions to secure payment of bonds. In connection with the issuance of the bonds for the purpose of paying in whole (or as supplemented by a grant from the United States or any instrumentality or agency thereof) the cost of the works or project or in order to secure the payment of the bonds, the board may:

(1) pledge all or any part of the income, profit, and revenue of the works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project and covenant to pay the income, profit, and revenue into the appropriate water fund and sinking fund;

(2) covenant against pledging all or any part of the income, profit, and revenue of the works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project;

(3) covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien thereon;

(4) covenant to fix and establish such prices, rates, and charges for water and other services made available in connection with the works or project so as to provide at all times funds which will be sufficient to:

(a) pay all costs of operation and maintenance of the works or project, together with necessary repairs thereto;

(b) meet and pay the principal and interest of all the bonds as they severally become due and payable; and

(c) create such reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the board determines;

(5) make such further covenants as to such prices, rates, and charges as the board determines;

(6) create special funds, in addition to those required by this chapter, for moneys reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which and the depositary or depositaries in which those funds shall be deposited and the manner in which they shall be secured, and it is lawful for any bank or trust company incorporated under the laws of the state to act as that depositary and to furnish such indemnifying bonds or to pledge such securities as required by the board;

(7) provide for the replacement of lost, destroyed, or mutilated bonds;

(8) covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly, by any means or in any manner;

(9) prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

(10) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(11) vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds or to foreclose any trust indenture in relation thereto, provide for the powers and duties of the trustee or trustees, limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure;

(12) make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the absolute discretion of the board, to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated or expressly authorized herein;

(13) do all things in the issuance of the bonds and provide for their security not inconsistent with the constitution of Montana.

History: En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(3).

85-1-308. Provisions for conveyance in trust or mortgage. In the discretion of the board, any trust indenture executed by it as security for a series of such bonds may contain provisions for conveying in trust or mortgaging the works, the project, or any part of such works or project, including all water rights which are a part thereof, constructed with the proceeds of such bonds or with such proceeds as supplemented by the proceeds of a grant to aid in financing such construction from the United States of America or any instrumentality or agency thereof. The trust indenture may be in such form and with such rights, remedies, and provisions as is customary in trust indentures, deeds of trust, and mortgages securing bonds and/or debentures of corporations. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project shall obtain title to such works or project free from any trust or other obligation of the board, the state of Montana, or the public thereof as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in such works or project for sale, rental, distribution, or other beneficial use.

History: En. Sec. 4, Ch. 95, L. 1935; re-en. Sec. 349.9, R.C.M. 1935; R.C.M. 1947, 89-112.

85-1-309. Actions by trustee and bondholders. (1) Any holder of any bonds issued under 85-1-301 or 85-1-303 or any of the coupons attached thereto and the trustee, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may:

(a) either at law or in equity, by suit, action, mandamus, or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted hereunder or under the resolution or trust indenture; and

(b) enforce and compel performance of all duties required by this chapter or by the resolution or trust indenture to be performed by the board or the department.

(2) While any bonds issued by the board remain outstanding, the powers, duties, or existence of the board or any official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of the bonds.

History: En. Sec. 15, Ch. 35, Ex. L. 1933; re-en. Sec. 349.16, R.C.M. 1935; amd. Sec. 133, Ch. 253, L. 1974; R.C.M. 1947, 89-119.

85-1-310. Refunding revenue bonds. The board may issue refunding revenue bonds under the provisions of Title 7, chapter 7, part 46. For this purpose, in Title 7, chapter 7, part 46, references to "governing body" means the "board" and references to "municipality" means the "board".

History: En Sec. 11, Ch. 212, L. 1979.

Compiler's Comments

Codification. Sec. 12, Ch. 212, L. 1979, provided: "It is intended that section 11 be codified as an integral part of Title 85, chapter 1, part 3, and the provisions of Title 85, chapter 1, apply to section 11."

85-1-311 through 85-1-320 reserved.

85-1-321. Funds in general. The board shall create a fund to be known as the "administration fund" and shall also create three separate funds in respect of the bonds of each series, one fund to be known as the "construction fund, series ....", another fund to be known as the "water fund, series ....", and another fund to be known as the "sinking fund, series ....", each fund to be identified by the same series letter or letters as the bonds of the series. The moneys in each fund shall be deposited in such depository or depositories and secured in such manner as determined by the board. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the board. A separate account shall be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project shall be charged by the department in such proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which the expenditures were incurred.

History: **En. Sec. 9, Ch. 35, Ex. L. 1933; re-en. Sec. 349.10, R.C.M. 1935; amd. Sec. 127, Ch. 253, L. 1974; R.C.M. 1947, 89-113.**

85-1-322. Construction funds. The proceeds of the bonds of each series issued under 85-1-301 and 85-1-303 shall be placed to the credit of the appropriate construction fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in the fund and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in each construction fund shall be paid out or disbursed in such manner as may be determined by the department, subject to this chapter, to pay the cost of the works. Any surplus which may remain in any construction fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate sinking fund hereinafter provided for.

History: **En. Sec. 10, Ch. 35, Ex. L. 1933; re-en. Sec. 349.11, R.C.M. 1935; amd. Sec. 128, Ch. 253, L. 1974; R.C.M. 1947, 89-114.**

85-1-323. Sinking funds. (1) The board shall provide, in the proceedings authorizing the issuance of each series of bonds or in the trust indenture securing the same, for the paying into the appropriate sinking fund at stated intervals all moneys then remaining in the water fund after paying all costs of operation, maintenance, and repairs of the works. All moneys in each sinking fund shall be pledged for the payment of and used only for the purpose of paying:

(a) the interest upon the bonds as such interest shall fall due;

(b) the necessary fiscal agency charges for paying bonds and interest;

(c) the principal of the bonds as they fall due; and

(d) any premiums upon bonds retired by call or purchase as herein provided.

(2) Prior to the issuance of the bonds of each series, the board may provide by resolution or by such trust indenture for using the sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof but not exceeding the price, if any, at which the same shall at the next interest date be payable or redeemable, and all bonds redeemed or purchased shall forthwith be canceled and no bonds shall be issued in place thereof. The moneys in each sinking fund, less such

reserve as may be provided for in the resolution authorizing the bonds or in the trust indenture for the payment of interest and/or principal, if not used within a reasonable time for the purchase of bonds for cancellation as provided above, shall be applied to the redemption of bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 12, Ch. 35, Ex. L. 1933; re-en. Sec. 349.13, R.C.M. 1935; R.C.M. 1947, 89-116.

85-1-324 through 85-1-330 reserved.

85-1-331. Acceptance and use of appropriations and contributions. The department may receive and accept appropriations and contributions from any source of either money or property or other things of value to be held, used, and applied for the purposes in this chapter.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(2).

85-1-332. Disposition of moneys collected. (1) For the purpose of carrying out the provisions of this chapter and such other water resource authority, powers, and duties as are conferred upon the department by law, the following moneys shall be deposited in the earmarked revenue fund for the use of the department:

(a) all sums of money donated or contributed by the federal government or any department or agencies thereof;

(b) all gifts, donations, bequests, and devises made to the state therefor and proceeds of the sale thereof; and the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired with money received under this subsection;

(c) all reimbursements for money advanced for the payment of the assessments upon state, school-granted, and other public lands for the improvement thereof as provided by law;

(d) all reimbursements for money advanced for the investigation and survey of reclamation, electrification, and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and diking, drainage, and diking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance, and operation of plants or projects for the manufacture or distribution of electric current;

(e) all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities, or towns or their proportion of the cost thereof or from any other sources.

(2) The following shall be deposited in the state general fund:

(a) all income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under this chapter; and

(b) all sums received by the department for the use of electricity in excess of the maintenance and operation of the electrification system or project.

History: En. Sec. 1, Ch. 169, L. 1935; re-en. Sec. 349.63, R.C.M. 1935; amd. Sec. 241, Ch. 147, L. 1963; amd. Sec. 153, Ch. 253, L. 1974; amd. Sec. 3, Ch. 460, L. 1977; R.C.M. 1947, 89-401.

85-1-333. Payment of expenses. From the moneys of the department in the earmarked revenue fund, upon vouchers approved by it, there shall be paid:

(1) such sums as are found to be necessary or expedient for the investigation and survey of unreclaimed and undeveloped lands to determine the relative agricultural value, productiveness, uses, and feasibility and cost of the reclamation and development thereof;

(2) such sums as are found to be necessary or expedient for the investigation and survey of electrification and rehabilitation systems and projects proposed to be financed in whole or in part by the department;

(3) such amounts as may be authorized by the department for the reclamation of lands by diking, drainage, diking and drainage and irrigation districts duly and regularly organized under the laws of this state and such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands;

(4) such amounts as may be authorized by the department for the construction, maintenance, and operation of dams and dikes for the conservation of water for reclamation projects or stock reservoirs and purchase of rights-of-way and other costs preliminary to construction of reclamation, stock reservoirs, electrification, or rehabilitation systems or projects authorized under this chapter.

History: En. Sec. 2, Ch. 169, L. 1935; re-en. Sec. 349.64, R.C.M. 1935; amd. Sec. 80, Ch. 147, L. 1963; amd. Sec. 154, Ch. 253, L. 1974; R.C.M. 1947, 89-402(part).

85-1-334. Seventeen major irrigation projects — disposition of money. The outstanding water conservation revenue bonds issued for 17 major irrigation projects and purchased by the state shall be administered by the department for the benefit of the state general fund. All sums received from the sale of water through water purchase contracts or otherwise from the 17 irrigation projects, except those funds which are specifically collected for the operation and maintenance of the projects, and all other income or other benefits arising from, out of, or in connection with the ownership of the projects from whatever source derived shall be deposited in the state general fund to be applied on the retirement of the bonds and any advances or other indebtedness made for the benefit of the 17 projects by the department.

History: En. Sec. 1, Ch. 148, L. 1951; amd. Sec. 78, Ch. 147, L. 1963; amd. Sec. 130, Ch. 253, L. 1974; R.C.M. 1947, 89-116.1.

Part 4

Special Projects

85-1-401. Legislative finding. (1) The legislature finds that the Daly ditch water project:

(a) would need extensive and costly repairs if operation of the project were to continue;

(b) has been historically operating at a loss since the state has owned and operated the project;

(c) would require increasing subsidization from the general fund for future operation of the project; and

(d) is, therefore, financially unsound.

(2) The legislature finds further that:

(a) the useful life of the Daly ditch water project to the state of Montana is at an end; and

(b) the Daly ditch water project should be disposed of by the state of Montana.

(3) Therefore, the legislature directs the department to dispose of the project as provided in 85-1-403 and to cancel and write off accounts receivable carried on the books of the department. If the department is not able to dispose of the project as provided in 85-1-403, then the project shall be abandoned as provided in 85-1-404.

History: **En. Sec. 1, Ch. 534, L. 1979.**

Compiler's Comments

Severability. Sec. 10, Ch. 534, L. 1979, was a severability section.

Effective date. Sec. 11, Ch. 534, L. 1979, provided: "This act is effective on passage and approval." Approved April 10, 1979.

85-1-402. Definitions. Unless the context requires otherwise, in 85-1-401 through 85-1-409 the following definitions apply:

(1) "Daly ditch water project" or "project" means the irrigation water project located in Ravalli County, Montana, and owned and operated by the state of Montana.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

History: **En. Sec. 2, Ch. 534, L. 1979.**

85-1-403. Disposition of project. (1) Prior to July 1, 1982, the department may dispose of the Daly ditch water project by transfer, sale, or other legal conveyance to a person legally qualified to enter into contracts and operate and maintain the project. Preference shall be given to an organization of project water users formed to operate the project.

(2) Upon conveyance of the project, the department shall transfer all water rights, real property, personal property, equipment, fixtures, headgates, structures, canals, dikes, lateral ditches, dams, and reservoirs related to the project.

(3) If the department has entered into an agreement to transfer the project prior to July 1, 1982, but the actual transfer has not been effectuated prior to July 1, 1982, the department shall not abandon the project as provided in 85-1-404 until December 31, 1982.

History: **En. Sec. 3, Ch. 534, L. 1979.**

85-1-404. Abandonment of project. (1) If the project is not disposed of as provided in 85-1-403, the department shall abandon the project no later than December 31, 1982.

(2) The department shall publish notification of intent to abandon the project once a week for 2 consecutive weeks in a newspaper of general circulation in the Hamilton, Montana, area.

(3) A person to whom project properties revert, if any, may notify the department that he desires to take possession of the abandoned property in its present condition within 30 days after the last date of publication.

(4) The department shall not publish notification of intent to abandon until it has attempted to dispose of the project by transfer, sale, or other legal conveyance.

History: En. Sec. 4, Ch. 534, L. 1979.

85-1-405. Operation and maintenance. The department shall operate and maintain the project until July 1, 1982, or until the project is disposed of or abandoned as provided in 85-1-401 through 85-1-409.

History: En. Sec. 5, Ch. 534, L. 1979.

85-1-406. Entry on land. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of 85-1-401 through 85-1-409, including but not limited to entry to make inspections the department considers necessary of the project, entry to salvage or remove project property, and entry to make physical alterations to project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

History: En. Sec. 6, Ch. 534, L. 1979.

85-1-407. Writeoff accounts receivable. Upon abandonment or disposition of the project, the department shall cancel and write off accounts receivable carried on the books of the department. The department shall establish procedures for canceling and writing off accounts receivable, and the procedures shall include the reporting of the canceling and writing off of the accounts receivable to the next session of the legislature.

History: En. Sec. 7, Ch. 534, L. 1979.

85-1-408. Other laws and rules superseded. Sections 85-1-401 through 85-1-409 supersede other laws and rules. If any provision of 85-1-401 through 85-1-409 is in conflict with any other law of this state or any rule adopted thereunder, 85-1-401 through 85-1-409 govern and control and the other law or rule is superseded for the purpose of 85-1-401 through 85-1-409.

History: En. Sec. 8, Ch. 534, L. 1979.

85-1-409. Advisory council. (1) The department shall appoint an advisory council comprised of three legislators from Ravalli County and three representatives of the Daly ditch water users. In addition, the department may appoint one additional legislator to serve on the advisory council.

(2) The advisory council shall make recommendations concerning the disposition of the project pursuant to the provisions of 85-1-401 through 85-1-409, repair of the project, and all questions of operation and maintenance.

(3) The advisory council shall be created as provided in 2-15-122.

(4) The advisory council terminates no later than December 31, 1982.

History: En. Sec. 9, Ch. 534, L. 1979.

CHAPTER 2

SURFACE AND GROUNDWATER

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Part 1

General Provisions

85-2-101. Declaration of policy and purpose. (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter.

(2) A purpose of this chapter is to implement Article IX, section 3 (4) of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation, and future beneficial use and development of Montana's water for the state and its citizens and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities which store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of stream flows, and for groundwater recharge.

(4) Pursuant to Article IX, section 3 (1) of the Montana constitution, it is further the policy of this state and a purpose of this chapter to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

History: En. Sec. 2, Ch. 452, L. 1973; R.C.M. 1947, 89-866.

85-2-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(8) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(9) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(10) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(11) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(12) "Slurry" means a mixture of water and insoluble material.

(13) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(14) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(15) "Water division" means a drainage basin as defined in 3-7-102.

(16) "Water judge" means a judge as provided for in Title 3, chapter 7.

(17) "Water master" means a master as provided for in Title 3, chapter 7.

(18) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

History: En. Sec. 3, Ch. 452, L. 1973; amd. Sec. 1, Ch. 192, L. 1974; amd. Sec. 1, Ch. 485, L. 1975; amd. Sec. 1, Ch. 416, L. 1977; amd. Sec. 7, Ch. 460, L. 1977; R.C.M. 1947, 89-867; amd. Sec. 1, Ch. 327, L. 1979; amd. Sec. 1, Ch. 552, L. 1979; amd. Sec. 29, Ch. 697, L. 1979.

85-2-103. Measurement of water. (1) After July 1, 1899, a cubic foot of water (7.48 gallons) per second of time shall be the legal standard for the measurement of water in this state.

(2) Where water rights expressed in statutory or miner's inches have been granted, 100 statutory or miner's inches shall be considered equivalent to a flow of 2.5 cubic feet (18.7 gallons) per second, 200 statutory or miner's inches shall be considered equivalent to a flow of 5 cubic feet (37.4 gallons)

per second, and this proportion shall be observed in determining the equivalent flow represented by any number of statutory or miner's inches.

(3) The provisions of this section shall not affect or change the measurement of water decreed by a court prior to July 1, 1899, but such decreed water shall be measured according to the law in force at the time such decree was made and entered.

History: (1)En. Sec. 1, p. 126, L. 1899; re-en. Sec. 4854, Rev. C. 1907; re-en. Sec. 7107, R.C.M. 1921; re-en. Sec. 7107, R.C.M. 1935; Sec. 89-817, R.C.M. 1947; (2)Ap. p. Sec. 2, p. 126, L. 1899; re-en. Sec. 4855, Rev. C. 1907; re-en. Sec. 7108, R.C.M. 1921; re-en. Sec. 7108, R.C.M. 1935; Sec. 89-818, R.C.M. 1947; Ap. p. Sec. 10, Ch. 185, L. 1907; re-en. Sec. 4877, Rev. C. 1907; re-en. Sec. 7132, R.C.M. 1921; re-en. Sec. 7132, R.C.M. 1935; Sec. 89-843, R.C.M. 1947; (3)En. Sec. 3, p. 126, L. 1899; re-en. Sec. 4856, Rev. C. 1907; re-en. Sec. 7109, R.C.M. 1921; re-en. Sec. 7109, R.C.M. 1935; Sec. 89-819, R.C.M. 1947; R.C.M. 1947, 89-817, 89-818, 89-819, 89-843(part).

85-2-104. Slurry transport of coal. (1) The legislature finds that the use of water for the slurry transport of coal is detrimental to the conservation and protection of the water resources of the state.

(2) The use of water for the slurry transport of coal is not a beneficial use of water.

History: En. Sec. 2, Ch. 552, L. 1979.

Compiler's Comments

Codification. Sec. 2, Ch. 552, L. 1979, provided: "It is intended that section 2 be codified as an integral part of Title 85, chapter 2, part 1, and the provisions of Title 65, chapter 2, apply to section 2."

85-2-105 through 85-2-110 reserved.

85-2-111. Department powers. The department may:

(1) enter into agreements with federal, state, or local agencies necessary to carry out this chapter;

(2) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this chapter.

History: En. Sec. 4, Ch. 452, L. 1973; R.C.M. 1947, 89-868(2).

85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, declaration, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, declarations, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with

the department or claims of existing rights with a district court under this chapter.

History: **En. Sec. 4, Ch. 452, L. 1973; R.C.M. 1947, 89-868(1); amd. Sec. 30, Ch. 697, L. 1979.**

85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled groundwater area or proposed controlled groundwater area unless the maximum yield of the well is in excess of 100 gallons a minute;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

History: **En. Sec. 5, Ch. 452, L. 1973; amd. Sec. 1, Ch. 238, L. 1974; amd. Sec. 2, Ch. 485, L. 1975; R.C.M. 1947, 89-869; amd. Sec. 1, Ch. 292, L. 1979; amd. Sec. 31, Ch. 697, L. 1979.**

85-2-114. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference.

(2) The department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference.

History: En. Sec. 33, Ch. 452, L. 1973; R.C.M. 1947, 89-897; amd. Sec. 32, Ch. 697, L. 1979.

85-2-115. Entry on land. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this chapter, including but not limited to entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works, and other inspections to ascertain whether or not persons are complying with this chapter. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

History: En. Sec. 34, Ch. 452, L. 1973; R.C.M. 1947, 89-898.

85-2-116. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

History: En. Sec. 35, Ch. 452, L. 1973; amd. Sec. 9, Ch. 460, L. 1977; R.C.M. 1947, 89-899.

85-2-117 through 85-2-120 reserved.

85-2-121. Administrative proceedings. The Montana Administrative Procedure Act governs administrative proceedings conducted under parts 1 through 4 of this chapter, except that the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

History: En. Sec. 36, Ch. 452, L. 1973; amd. Sec. 13, Ch. 485, L. 1975; amd. Sec. 9, Ch. 416, L. 1977; R.C.M. 1947, 89-8-100.

85-2-122. Penalties. A person who violates or refuses or neglects to comply with 85-2-301, 85-2-402(1), and 85-2-403(3), any order of the department, or any rule of the board is guilty of a misdemeanor.

History: En. Sec. 37, Ch. 452, L. 1973; R.C.M. 1947, 89-8-101.

85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124, all fees and penalties collected under this chapter shall be deposited in the state general fund. All penalties or fines imposed by any court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine.

History: En. Sec. 38, Ch. 452, L. 1973; R.C.M. 1947, 89-8-102.

85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within 30 days of receipt of a correct and complete application (or a combination of applications) if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to $1 million; plus 1% of the estimated cost over $1 million and up to $20 million; plus ½ of 1% of the estimated cost over $20 million and up to $100 million; plus ¼ of 1% of the estimated cost over $100 million and up to $300 million; plus ⅛ of 1% of the estimated cost over $300 million. The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the Montana Major Facility Siting Act, and the appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

(6) This section shall apply to all applications, pending or hereinafter filed, for which the department has not, as of April 9, 1975, commenced writing an environmental impact statement. This section shall not apply to any application, the fee for which would not exceed $2,500.

(7) Failure to submit the fee as required by this section shall void the application(s).

(8) The department may, in its discretion, rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement.

History: **En. 89-8-102.2 by Sec. 1, Ch. 356, L. 1975; amd. Sec. 1, Ch. 117, L. 1977; R.C.M. 1947, 89-8-102.2.**

85-2-125. Recovery of attorney fees by prevailing party. If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees.

History: **En. 89-8-100.1 by Sec. 11, Ch. 416, L. 1977; R.C.M. 1947, 89-8-100.1.**

85-2-126 through 85-2-130 reserved.

85-2-131. Application for change of watercourse name. (1) All applications for the change of name of any watercourse or natural source of water supply, including natural streams, dry coulees, springs, lakes, rivers, or creeks which lie wholly within the limits of one county must be made to the district court of the county where the watercourse or other natural source of water supply, the name of which is proposed to be changed, or some part thereof is situated. The petition must state in ordinary and concise language:

(a) a description of the watercourse or other natural source of water supply, the name of which is proposed to be changed, identifying the same as near as may be by natural monuments;

(b) the present name of the stream or other natural source of water supply and the name to which the petitioners desire the same to be changed, together with the reasons for the desired change of name;

(c) the names of all persons or corporations owning real estate abutting upon or water rights upon the same whose titles appear of record in the office of the county clerk and recorder in the county in which the watercourse or other natural source of water supply, or some part thereof, is situated.

(2) The petition must be signed by not less than 10 owners of real property abutting upon said watercourse or other natural source of water supply or owning water rights upon the same.

(3) The insufficiency of the petition in any of the above respects shall not be held to defeat the jurisdiction of the court.

History: **En. Sec. 1, Ch. 101, L. 1911; re-en. Sec. 9968, R.C.M. 1921; re-en. Sec. 9968, R.C.M. 1935; R.C.M. 1947, 93-100-6.**

85-2-132. Change of watercourse name — public notice. When such petition is filed in the district court, the court or the judge thereof shall designate some newspaper of general circulation in the county, such as is most likely to give all parties interested notice of the proceedings, and shall order that notice be published therein as hereinafter provided, and in his discretion he may require any other and further notice that to him may seem reasonable and shall fix a time at which objections to the granting of the petition for the change of name shall be heard. A copy of the petition, together with a notice of the time set for hearing objections thereto, shall be published in the newspaper designated by the court or judge for that purpose at least once a week for 4 successive weeks, and such other and further notice of the proceedings shall be given as the court or judge may in his discretion require.

History: En. Sec. 2, Ch. 101, L. 1911; re-en. Sec. 9969, R.C.M. 1921; re-en. Sec. 9969, R.C.M. 1935; R.C.M. 1947, 93-100-7.

85-2-133. Change of watercourse name — hearing. At the time set for hearing or at any time prior thereto, objections may be filed by any person who can, in such objections, show to the court or judge good reason against such change of name. The application and the objections must be heard at such time as the court or judge may appoint. On hearing, the court or judge may examine on oath any of the petitioners, remonstrants, objectors, or other persons touching the application and may make an order changing the name or dismissing the application as to the court or judge may seem right and proper.

History: En. Sec. 3, Ch. 101, L. 1911; re-en. Sec. 9970, R.C.M. 1921; re-en. Sec. 9970, R.C.M. 1935; R.C.M. 1947, 93-100-8.

85-2-134. Change of watercourse name — judgment to be filed with county clerk. If the change of name be ordered, a copy of the judgment, duly certified by the clerk of the court, shall be filed with the county clerk and recorder of the county in which the watercourse or other natural source of water supply is situated, and the clerk of the court shall, annually, in the month of January, make a return to the office of the secretary of state of all changes of names made in the district court of his county under this section.

History: En. Sec. 4, Ch. 101, L. 1911; re-en. Sec. 9971, R.C.M. 1921; re-en. Sec. 9971, R.C.M. 1935; R.C.M. 1947, 93-100-9.

Part 2

Adjudication of Water Rights

85-2-201 through 85-2-210. Repealed. Sec. 37, Ch. 697, L. 1979.

85-2-211. Petition by attorney general. Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221.

History: En. Sec. 20, Ch. 697, L. 1979.

Compiler's Comments

Purpose. Subsection (1) of sec. 1, Ch. 697, L. 1979, provided: "[This act] amends the Montana Water Use Act to expedite and facilitate the adjudication of existing water rights."

Codification. Sec. 35, Ch. 697, L. 1979, provided: "(1) Sections 1 through 10 of this act are intended to be codified as an integral part of Title 3, and the provisions contained in Title 3 apply to this act.

(2) Sections 11 through 27 are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions contained in Title 85, chapter 2, apply to this act.

(3) If the provisions of this act are not codified as stated above, the code commissioner shall add to the MCA, if necessary, statutory language to convey the intent of this section."

Because of rearrangement of the new material, Ch. 697 is now codified in Title 3, chapter

7; Title 85, chapter 2, parts 2 and 7; and 2-15-212.

Effective date. "This act is effective on passage and approval." Approved May 11, 1979.

Severability. Section 36, Ch. 697, L. 1979, was a severability section.

85-2-212. Order by supreme court. (1) The Montana supreme court shall within 10 days of the filing of the petition by the attorney general issue an order to file a statement of a claim of an existing water right in substantially the following form:

"WATER RIGHTS ORDER

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence shall be printed in not less than 12-point boldface type.) This order is notice of commencement of procedures for the general adjudication of existing rights to the use of water and of the requirement to file a claim for certain existing rights to the use of water. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the state of Montana, and federal agency of the United States of America on its own behalf or as trustee for any Indian or Indian tribe, asserting a claim to an existing right to the use of water arising prior to July 1, 1973, is ordered to file a statement of claim to that right with the department no later than June 30, 1983. Claims for stock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in the Powder River Basin in a declaration filed pursuant to the order of the department of natural resources and conservation or a district court issued pursuant to sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are also exempt.

For further information, contact the department of natural resources and conservation, Helena, Montana, for a copy of the law and an explanation of it."

(2) Upon petition of the attorney general, the Montana supreme court shall issue the order called for in subsection (1) with a shorter claim filing period of not less than 1 year, subject to extension not beyond June 30, 1983, by the Montana supreme court upon petition of the attorney general, in those basins or subbasins where state adjudication jurisdiction is being or is likely to be challenged.

History: En. Sec. 16, Ch. 697, L. 1979.

85-2-213. Notice of order. To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

(1) It shall cause the order printed in not less than 10-point type to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

(2) It shall cause the order in writing to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

(3) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

(4) It shall provide copies of the order in writing to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

(5) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

(6) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(7) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

History: En. Sec. 17, Ch. 697, L. 1979.

85-2-214. Commencement of action. (1) The action for the adjudication of all existing water rights under this part, part 7, and Title 3, chapter 7, is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212. As to each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within his water division and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.

History: En. Secs. 6, 20, Ch. 697, L. 1979.

85-2-215. Consolidation of matters. The water judge may consolidate all matters concerning the determination and interpretation of existing water rights within the water judge's division in any combination or groups of claims or matters for joint hearings or proceedings conducted by the water judge or water master in any location within the division. The water judge may make such consolidations as are necessary to administer the requirements of this part and part 7 in adjudicating claims of existing water rights.

History: En. Sec. 6, Ch. 697, L. 1979.

85-2-216. Venue for water rights determinations. All matters concerning the determination and interpretation of existing water rights shall be brought before or immediately transferred to the water judge in the proper water division unless witnesses have been sworn and testimony has been taken by a district court prior to the date of the Montana supreme court order as provided in 85-2-212.

History: **En. Sec. 6, Ch. 697, L. 1979.**

85-2-217. Suspension of adjudication. From the time of filing the petition required in 85-2-211 until July 1, 1982, and while negotiations for the conclusion of a compact under part 7 are being pursued, all actions to generally adjudicate reserved Indian water rights from a source of water in question under this part are suspended, unless an action is commenced or is pending by or on behalf of an Indian tribe to adjudicate water from that source other than as provided for in Title 85, chapter 2. In such case, the suspension is maintained only if the action is dismissed or if the parties to the action stipulate to the suspension during compact negotiations of all further proceedings in the action except the determination of jurisdictional issues and an order is so issued.

History: **En. Sec. 27, Ch. 697, L. 1979.**

85-2-218 through 85-2-220 reserved.

85-2-221. Filing of claim of existing water right. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

History: **En. Sec. 11, Ch. 697, L. 1979.**

85-2-222. Exemptions. Claims for existing rights for livestock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources and claims for rights in the Powder River Basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are exempt from the filing requirements of 85-2-221(1). Such claims may, however, be voluntarily filed.

History: **En. Sec. 11, Ch. 697, L. 1979.**

85-2-223. Public recreational uses. The department of fish, wildlife, and parks shall exclusively represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this part, provided that the foregoing shall not exclude a federal governmental entity from representing the public for the purpose of establishing any prior and existing public recreational use in existing right determinations under this part. The foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

History: **En. Sec. 12, Ch. 697, L. 1979.**

85-2-224. Statement of claim. (1) The statement of claim for each right shall include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water and times of use claimed;

(d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;

(e) the purpose of use, including, if for irrigation, the number of acres irrigated;

(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) The claimant shall submit maps, plats, aerial photographs, decrees, or pertinent portions thereof, or other evidence in support of his claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

History: **En. Sec. 13, Ch. 697, L. 1979.**

85-2-225. Filing fee. Each claim filed under 85-2-221 shall be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(1) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(2) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or pertinent portion thereof or verified as otherwise ordered by the court.

History: **En. Sec. 18, Ch. 697, L. 1979.**

85-2-226. Abandonment by failure to file claim. The failure to file a claim of an existing right as required by 85-2-221 establishes a conclusive presumption of abandonment of that right.

History: **En. Sec. 14, Ch. 697, L. 1979.**

85-2-227. Claim to constitute prima facie evidence. A claim of an existing right filed in accordance with 85-2-221 constitutes prima facie proof of its content until the issuance of a final decree.

History: **En. Sec. 15, Ch. 697, L. 1979.**

85-2-228 through 85-2-230 reserved.

85-2-231. Preliminary decree. (1) Within a reasonable time after the close of the filing period, the water judge shall issue a preliminary decree. The preliminary decree shall be based on the statements of claim before the water judge, the data submitted by the department, and any additional data obtained by the water judge.

(2) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under

85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been agreed upon by the parties to the compact whether or not it has been ratified by congress.

(3) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (2), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

History: En. Secs. 22, 27, Ch. 697, L. 1979.

Compiler's Comments

Commissioner correction. Because of rearrangement of sec. 27, Ch. 697, L. 1979, the Code Commissioner, 1979, added the words "negotiated under the provisions of part 7" to the last sentence in subsection (2).

85-2-232. Availability of preliminary decree. (1) The water judge shall send a copy of the preliminary decree to the department, and the water judge shall serve by mail a notice of availability of the preliminary decree to each person who has filed a claim of existing right, or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a beneficial water use permit pursuant to Title 85, chapter 2, part 3, those granted a reservation pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(2) Any person may obtain a copy of the preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater, to the water judge.

History: En. Sec. 22, Ch. 697, L. 1979.

85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional 30 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which

objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

History: En. Sec. 23, Ch. 697, L. 1979.

85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities within the water judge's jurisdiction of persons required by 85-2-221 to file a claim for an existing right and of persons required to file a declaration of existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water, rate, and volume, included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

History: En. Sec. 24, Ch. 697, L. 1979.

85-2-235. Appeals from final decree. A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to the preliminary decree; or

(2) his rights as determined in the preliminary decree were altered as the result of a hearing requested by another person.

History: En. Sec. 25, Ch. 697, L. 1979.

85-2-236. Certificate of water right. When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the county clerk and recorder of the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.
History: **En. Sec. 26, Ch. 697, L. 1979.**

85-2-237 through 85-2-240 reserved.

85-2-241. Water right adjudication account. There is established a water right adjudication account in the earmarked revenue fund of the state treasury. All fees collected under this section and 85-2-232 shall be deposited in the account to pay the expenses incurred by the state for administering this part, part 7, and Title 3, chapter 7.
History: **En. Sec. 18, Ch. 697, L. 1979.**

85-2-242. Expenses to be borne by state. All expenses incurred by the state as a result of this part, part 7, and Title 3, chapter 7, are to be paid from the water right adjudication account in the earmarked revenue fund established in 85-2-241. Expenses include but are not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in administering this part, part 7, and Title 3, chapter 7. If sufficient revenue is not available from the earmarked revenue fund, the expense shall be paid from the state's general fund.
History: **En. Sec. 19, Ch. 697, L. 1979.**

85-2-243. Department assistance to water judges. The department, subject to the direction of the water judge, shall, without cost to the judicial districts wholly or partly within his water division:

(1) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(2) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

(3) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(4) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.
History: **En. Sec. 21, Ch. 697, L. 1979.**

Part 3

Appropriations, Permits, and Certificates of Water Rights

85-2-301. Right to appropriate. After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(1).

85-2-302. Application for permit. Except as otherwise provided in (1) and (2) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 18 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 18 months shall be terminated.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(2).

85-2-303. Permit for conversion of nonproductive oil or gas well. A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this chapter. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(6).

85-2-304. Appropriation by state board of land commissioners. The state board of land commissioners may, through the department of natural resources and conservation, at its discretion, appropriate any available waters for use upon state lands and authorize the construction of irrigation works for these lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals.

History: En. Sec. 2, Ch. 85, L. 1905; re-en. Sec. 2254, Rev. C. 1907; re-en. Sec. 1965, R.C.M. 1921; amd. Sec. 3, Ch. 280, L. 1965; amd. Sec. 113, Ch. 253, L. 1974; R.C.M. 1947, 81-2018.

85-2-305. Appropriation permit for reservoir. A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this chapter.

History: En. Sec. 25, Ch. 452, L. 1973; R.C.M. 1947, 89-889.

85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than 100 gallons a minute. Within 60 days of completion of the well and appropriation of the groundwater for beneficial use, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is from a source other than a perennial flowing stream. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, before constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. If the department determines after processing the application that the rights of other appropriators have been or will be adversely affected, it may require the applicant to modify the construction of the impoundment or pit and issue the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(3) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(5), (7).

85-2-307. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for 3 consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under 85-2-316. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 30 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons.

History: En. Sec. 17, Ch. 452, L. 1973; amd. Sec. 9, Ch. 485, L. 1975; R.C.M. 1947, 89-881.

85-2-308. Objections. (1) An objection to an application must be filed by the date specified by the department under 85-2-307(2).

(2) The objection must state the name and address of the objector and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights, or interests of the objector would be adversely affected by the proposed appropriation, or the objector may state any other objections to the proposed appropriation he considers pertinent.

History: **En. Sec. 18, Ch. 452, L. 1973; R.C.M. 1947, 89-882.**

85-2-309. Hearings on objections. If the department determines that an objection to an application for a permit states a valid objection to the issuance of the permit, it shall hold a public hearing on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector. The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

History: **En. Sec. 19, Ch. 452, L. 1973; R.C.M. 1947, 89-883.**

85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no hearing is held, and within 180 days if a hearing is held. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

History: **(1), (2)En. Sec. 20, Ch. 452, L. 1973; amd. Sec. 10, Ch. 485, L. 1975; amd. Sec. 5, Ch. 416, L. 1977; Sec. 89-884, R.C.M. 1947 (3)En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L.**

1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; Sec. 89-880, R.C.M. 1947; R.C.M. 1947, 89-880(3), 89-884.

85-2-311. Criteria for issuance of permit. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply:

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion or construction are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more or 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected.

History: En. Sec. 21, Ch. 452, L. 1973; amd. Sec. 1, Ch. 156, L. 1975; amd. Sec. 1, Ch. 307, L. 1977; amd. Sec. 6, Ch. 416, L. 1977; R.C.M. 1947, 89-885.

85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department may limit the time for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation, and a copy shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the permit to the permittee.

History: En. Sec. 22, Ch. 452, L. 1973; R.C.M. 1947, 89-886.

85-2-313. Provisional permit. A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right to an appropriation obtained under a provisional permit by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the permit would have been denied or modified if the final decree had been available to the department.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(4).

85-2-314. Revocation of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be revoked. If the permittee fails to show sufficient cause, the department may revoke the permit.

History: En. Sec. 23, Ch. 452, L. 1973; R.C.M. 1947, 89-887.

85-2-315. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation, and a duplicate shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator.

(2) Except as provided in 85-2-313, a certificate of water right in a particular source may not be issued prior to a general determination under part 2 of this chapter of existing rights in that source.

History: En. Sec. 24, Ch. 452, L. 1973; R.C.M. 1947, 89-888.

85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest.

(4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(5) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(6) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(7) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for such use with the district, and the district upon approval of the application must inform the department of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the processing of such applications for the conservation districts.

(8) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

(9) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(10) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(11) Nothing in this section vests the board with the authority to alter a water right that is not a reservation.

History: En. Sec. 26, Ch. 452, L. 1973; amd. Sec. 11, Ch. 485, L. 1975; amd. Sec. 7, Ch. 416, L. 1977; R.C.M. 1947, 89-890; amd. Sec. 1, Ch. 689, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 689, L. 1979, provided: "This act is effective on passage and approval." Approved May 9, 1979.

85-2-317. Limitation on appropriation of ground water. (1) After May 7, 1979, no application for a permit to appropriate ground water in excess of 3,000 acre feet per year may be granted, except pursuant to an act of the legislature permitting the specific appropriation.

(2) Subsection (1) applies to any permit to appropriate ground water for which application has been made but which has not been granted as of May 7, 1979.

(3) This section does not apply to appropriations by municipalities for municipal use or to appropriations for public water supplies as defined in 75-6-102 or to appropriations for the irrigation of cropland owned and operated by the applicant.

(4) Any person, association, corporation, or other entity that applies for a permit to appropriate ground water, singularly or collectively, for the purpose of circumventing this section is punishable by a fine not exceeding $5,000.

History: En. Secs. 2, 4, Ch. 631, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 631, L. 1979, provided: "This act is effective on passage and approval." Approved May 7, 1979.

Part 4

Utilization of Water

85-2-401. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, shall be determined as provided in part 2 of this chapter.

History: En. Sec. 27, Ch. 452, L. 1973; R.C.M. 1947, 89-891; amd. Sec. 33, Ch. 697, L. 1979.

85-2-402. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet

the requirements of 85-2-308(2), and hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation right from an agricultural use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

History: En. Sec. 28, Ch. 452, L. 1973; amd. Sec. 3, Ch. 238, L. 1974; amd. Sec. 1, Ch. 338, L. 1975; amd. Sec. 8, Ch. 416, L. 1977; R.C.M. 1947, 89-892.

85-2-403. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) The person receiving the appropriation interest shall file with the department notice of the transfer on a form prescribed by the department.

(3) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2) and hearings shall be held in accordance with 85-2-309.

History: En. Sec. 29, Ch. 452, L. 1973; amd. Sec. 4, Ch. 238, L. 1974; R.C.M. 1947, 89-893.

85-2-404. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) This section does not apply to existing rights until they have been determined in accordance with part 2 of this chapter.

History: En. Sec. 30, Ch. 452, L. 1973; R.C.M. 1947, 89-894.

85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned his appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court which determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Civil Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) The determination of the court shall be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

History: En. Sec. 31, Ch. 452, L. 1973; R.C.M. 1947, 89-895.

85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to part 2 of this chapter, any party to the controversy may petition the district court for relief. The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the issuance of the final decree.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under part 2 of this chapter shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

History: En. Sec. 32, Ch. 452, L. 1973; amd. Sec. 12, Ch. 485, L. 1975; R.C.M. 1947, 89-896; amd. Sec. 34, Ch. 697, L. 1979.

85-2-407 through 85-2-410 reserved.

85-2-411. Water turned into natural channels. Water appropriated under an existing right or pursuant to this chapter may be turned into the natural channel of another stream or from a reservoir into the natural channel and withdrawn or diverted at a point downstream for beneficial use, but the waters of that stream may not thereby be diminished in quantity or deteriorated in quality to the detriment of a prior appropriator. Water stored in a reservoir under an existing right or pursuant to this chapter which is turned into a natural channel for withdrawal or diversion and beneficial use downstream shall not be considered a part of the natural flow of that stream.

History: En. 89-891.1 by Sec. 1, Ch. 103, L. 1974; R.C.M. 1947, 89-891.1.

85-2-412. Return of surplus water to stream. In all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream and there shall, at any time, be a surplus of water so diverted, over and above what is actually and necessarily used by the prior appropriator, such person shall be required to turn and cause to flow back into the stream such surplus water. Upon failure to do so within 24 hours after demand being made upon him in writing, to him in person or at his place of abode, by any person having a right to the use of such surplus water, the person so diverting the same shall be liable to the person aggrieved for the damage resulting therefrom, in such sum as may be determined by court.

History: En. Sec. 1, p. 52, L. 1879; re-en. Sec. 731, p. 562, 5th Div. Rev. Stat. 1879; re-en. Sec. 1239, 5th Div. Comp. Stat. 1887; amd. Sec. 1884, Civ. C. 1895; re-en. Sec. 1, Ch. 56, L. 1907; Sec. 4844, Rev. C. 1907; re-en. Sec. 7097, R.C.M. 1921; re-en. Sec. 7097, R.C.M. 1935; R.C.M. 1947, 89-805.

85-2-413. Diversion of natural flow of waters — when permitted. Any person, owning or in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of his lands cannot be obtained from the natural flow of the stream, who shall construct a reservoir or shall purchase or lease water from a reservoir owned by the department or another or shall otherwise acquire an interest in such reservoir or in water stored therein, which is so located that because of natural or other obstacles the water impounded therein cannot be conducted to the lands which he desires to irrigate, may, provided the stored water can be discharged into the stream in such a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of his lands in lieu of an equal amount of stored water; provided, however, that such exchange can be made without injury to said prior appropriators.

History: En. Sec. 1, Ch. 39, L. 1937; amd. Sec. 155, Ch. 253, L. 1974; R.C.M. 1947, 89-806.

85-2-414. Conduction of water. The right to conduct water from or over the land of another for any beneficial use includes the right to raise any water by means of dams, reservoirs, or embankments to a sufficient height to make the same available for the use intended, and the right to any and all land necessary therefor may be acquired upon payment of just compensation in the manner provided by law for the taking of private property for public use. If it is necessary to conduct the water across the right-of-way of any railroad, it shall be the duty of the owners of the ditch or flume to give 30 days' notice in writing to the owner or owners of such railway of their intention to construct a ditch or flume across the right-of-way of such railroad, the point at which the ditch or flume will cross the railroad, and the time when the construction of said ditch or flume will be made. If the owner or owners of such railroad or their agent fail to appear and attend at the time and place fixed in said notice, it shall be lawful for the owner or owners of the said flume or ditch to construct the same across the right-of-way of such railroad without further notice to said owner or owners of the railroad.

History: En. Sec. 1894, Civ. C. 1895; re-en. Sec. 4857, Rev. C. 1907; re-en. Sec. 7110, R.C.M. 1921; re-en. Sec. 7110, R.C.M. 1935; R.C.M. 1947, 89-820.

85-2-415. Owners of water to sell surplus. Any person having the right to use, sell, or dispose of water and engage in using, selling, or disposing of the same who has a surplus of water not used or sold or any person having a surplus of water and the right to sell and dispose of the same is required, upon the payment or tender to the person entitled thereto of an amount equal to the usual and customary rates per inch or cubic foot of water per second, to convey and deliver to the person the surplus of unsold water or so much thereof for which the payment or tender has been made and shall continue to convey and deliver the same weekly so long as the surplus of unused or unsold water exists and the payment or tender is made as aforesaid.

History: En. Sec. 1, p. 406, L. 1877; re-en. Sec. 742, 5th Div. Rev. Stat. 1879; re-en. Sec. 1263, 5th Div. Comp. Stat. 1887; re-en. Sec. 1897, Civ. C. 1895; re-en. Sec. 4860, Rev. C. 1907; re-en. Sec. 7113, R.C.M. 1921; re-en. Sec. 7113, R.C.M. 1935; amd. Sec. 6, Ch. 460, L. 1977; R.C.M. 1947, 89-823.

85-2-416. Duty of purchaser to dig ditches. Any person desiring to avail himself of the provisions of 85-2-415 must, at his own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by him and pay or tender to the person having the right to the use, sale, or disposal thereof an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct and putting in gates, gauges, or other proper and necessary appliances usual and customary in such cases, and until the same shall be done, the delivery of the surplus water shall not be required as provided in 85-2-415.

History: En. Sec. 2, p. 406, L. 1877; re-en. Sec. 743, 5th Div. Rev. Stat. 1879; re-en. Sec. 1264, 5th Div. Comp. Stat. 1887; re-en. Sec. 1898, Civ. C. 1895; re-en. Sec. 4861, Rev. C. 1907; re-en. Sec. 7114, R.C.M. 1921; re-en. Sec. 7114, R.C.M. 1935; R.C.M. 1947, 89-824.

85-2-417. Enforcement of right to surplus. Any person constructing the necessary ditches, aqueducts, or flumes and making the payments or tenders hereinbefore provided is entitled to the use of so much of the surplus water as said ditches, flumes, or aqueducts have the capacity to carry and for which payment or tender is made and may institute and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

History: En. Sec. 3, p. 406, L. 1877; re-en. Sec. 744, 5th Div. Rev. Stat. 1879; re-en. Sec. 1265, 5th Div. Comp. Stat. 1887; re-en. Sec. 1899, Civ. C. 1895; re-en. Sec. 4862, Rev. C. 1907; re-en. Sec. 7115, R.C.M. 1921; re-en. Sec. 7115, R.C.M. 1935; R.C.M. 1947, 89-825.

85-2-418. Purchaser cannot sell surplus water. Nothing in 85-2-415 through 85-2-417 shall be so construed as to give the person acquiring the right to the use of water, as therein provided, the right to sell or dispose of the same after being so used by him or prevent the original owner or proprietor from retaking, selling, and disposing of the same in the usual and customary manner after it is so used as aforesaid.

History: En. Sec. 4, p. 407, L. 1877; re-en. Sec. 745, 5th Div. Rev. Stat. 1879; re-en. Sec. 1266, 5th Div. Comp. Stat. 1887; re-en. Sec. 1900, Civ. C. 1895; re-en. Sec. 4863, Rev. C. 1907; re-en. Sec. 7116, R.C.M. 1921; re-en. Sec. 7116, R.C.M. 1935; R.C.M. 1947, 89-826.

Part 5

Groundwater

85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(3) "Groundwater" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and which is not a part of that surface water.

(4) "Groundwater area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of groundwater, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part); amd. Sec. 1, Ch. 561, L. 1979.

85-2-502. Administrative rules. The board may prescribe and the department shall enforce reasonable rules concerning and providing for inspection and entry for that purpose by the department, the circumstances under which the construction of weirs or other measuring devices may be required, and such other similar matters as are required by and consistent with the administration of this part.

History: En. Sec. 21, Ch. 237, L. 1961; amd. Sec. 177, Ch. 253, L. 1974; R.C.M. 1947, 89-2931.

85-2-503. Controlled groundwater subareas. For purposes of administration, large groundwater areas may be divided into convenient administrative units known as subareas.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part).

85-2-504. Standards for determining fresh water. Fresh water shall be considered to be water fit for domestic, livestock, or agricultural use. The department, after notice and hearing, may fix definite standards for determining fresh water in any controlled groundwater area or subarea of the state.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part).

85-2-505. Waste and contamination of groundwater prohibited. (1) No groundwater may be wasted. The department shall require all wells producing waters which contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination, or pollution of groundwater through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided, however, in the following cases the withdrawal or use of groundwater shall not be construed as waste under this part:

(a) the withdrawal of reasonable quantities of groundwater in connection with the construction, development, testing, or repair of a well or other means of withdrawal of groundwater;

(b) the inadvertent loss of groundwater owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(c) the disposal of groundwater without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same or that must be removed from a mine to permit mining operations or to preserve the mine in good condition;

(d) the disposal of groundwater used in connection with producing, reducing, smelting, and milling metallic ores and industrial minerals or that displaced from an aquifer by the storage of other mineral resources.

(2) The department at any time may hold a hearing on its own motion or upon petition signed by a representative body of users of groundwater in any area or subarea to determine whether the water supply within such area or subarea is used in compliance with this part.

History: En. Sec. 16, Ch. 237, L. 1961; amd. Sec. 173, Ch. 253, L. 1974; amd. Sec. 47, Ch. 460, L. 1977; R.C.M. 1947, 89-2926.

85-2-506. Controlled groundwater areas — designation or modification. (1) The board may designate or modify controlled groundwater areas as provided in this part.

(2) Designation or modification of an area of controlled groundwater use may be proposed to the board by the department on its own motion or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of groundwater in a groundwater area wherein there are alleged to be facts showing:

(a) that groundwater withdrawals are in excess of recharge to the aquifer or aquifers within such groundwater area;

(b) that excessive groundwater withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the groundwater area;

(c) that significant disputes regarding priority of rights, amounts of groundwater in use by appropriators, or priority of type of use are in progress within the groundwater area; or

(d) that groundwater levels or pressures in the area in question are declining or have declined excessively.

(3) When such a proposal is thus made, the board shall fix a time and place for a hearing, which time shall not be less than 90 days from the making of the proposal. The place for the hearing shall be within or as close as practical to the controlled groundwater area.

(4) The department shall publish a notice of the hearing, setting forth therein:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the groundwater area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) Such notice of hearing shall be published at least once in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the groundwater area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of groundwater in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws groundwater and not merely one who uses or obtains groundwater from another who diverts, impounds, or withdraws groundwater); upon the bureau; and upon the mayor or chairman of the governing body of each incorporated municipality located in whole or in part within the proposed groundwater area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled groundwater area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, shall be mailed to each person at his last-known address, and such service shall be complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of such notice as prescribed herein, when completed, shall be deemed to be sufficient notice of such hearing to all interested persons.

History: En. Sec. 4, Ch. 237, L. 1961; amd. Sec. 168, Ch. 253, L. 1974; R.C.M. 1947, 89-2914; amd. Sec. 2, Ch. 561, L. 1979.

Compiler's Comments

Severability. Sec. 4, Ch. 561, L. 1979, was a severability clause.

85-2-507. Limiting withdrawals — modification of order. (1) At the time set for the hearing, the board shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled groundwater area presented by the bureau, the department, and any other interested party. A full record shall be kept of all evidence taken at the hearing. The procedure shall be such as to secure a full, fair, and orderly proceeding and to permit all relevant evidence to be received. The common-law and statutory rules of evidence shall apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the board shall make written findings and an order. The board shall by order declare the area in question to be a controlled groundwater area if the board finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or groundwater by others; or

(iii) the facts alleged in the petition as required by 85-2-506(2) are true.

(3) The order shall define the boundary of the controlled groundwater area and shall indicate which of the groundwater aquifers located within the area in question are included within the controlled groundwater area. Any number of groundwater aquifers which wholly or partially overlie one another may be included in the same controlled groundwater area.

(4) The order may include the following corrective control provisions:

(a) a provision closing the controlled groundwater area to further appropriation of groundwater, in which event the department shall thereafter refuse to accept any applications for beneficial water use permits to appropriate groundwater located within such controlled area;

(b) a provision determining a permissible total withdrawal of groundwater in the controlled area by day, month, or year and permitting the board to apportion such permissible total withdrawal among the appropriators holding valid rights to the groundwater in the controlled area in accordance with the relative dates of priority of such rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of groundwater in the controlled area for domestic and livestock purposes first and thereafter to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in such order as the board considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of groundwater by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of groundwater by the appropriator or a provision forbidding the use of one or more such wells;

(f) a provision requiring and specifying a system of rotation of use of groundwater in the controlled area;

(g) provisions making such additional requirements as are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the board finds that sufficient facts are not available to designate or modify a permanent controlled groundwater area, the board may by order designate the area in question to be a temporary controlled groundwater area. Such order may include the corrective control provisions contained in subsection (4). A temporary controlled groundwater area shall be designated as such for a period not to exceed 2 years from the date of the board's order designating the temporary controlled groundwater area. The board may, for sufficient cause, extend the time period for an additional 2 years, and in this case all groundwater appropriators in the controlled groundwater area shall be notified of the extension.

(b) During the 2-year period, the department shall commence studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled groundwater area. Facts gathered during the study period shall be presented at a hearing prior to the designation or modification of a permanent controlled groundwater area. All parties appearing at the first hearing shall be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service shall be complete upon deposit of notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, shall be considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing shall be conducted by the board in the manner of the first hearing, and the board shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event the department does not complete the necessary study in the 2-year period or extension thereof, the temporary controlled groundwater area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the board shall be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the board shall be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, shall be mailed to each petitioner at his last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled groundwater area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of such order as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(8) The board may by order suspend, modify, or revoke any order made as provided in this section upon such notice and in such manner as is reasonable under the circumstances. A copy of each suspension, modification, or revocation shall be served or filed and recorded as provided for orders in subsection (1).

(9) While a matter is pending before the board, the department may restrict further development of the subarea.

History: En. Sec. 5, Ch. 237, L. 1961; amd. Sec. 41, Ch. 452, L. 1973; amd. Sec. 169, Ch. 253, L. 1974; R.C.M. 1947, 89-2915; amd. Sec. 3, Ch. 561, L. 1979.

85-2-508. Controlled groundwater areas — permits to appropriate. A person may appropriate groundwater in a controlled area only by applying for and receiving a permit from the department in accordance with part 3 of this chapter. The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the groundwater area to yield groundwater within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments).

History: En. Sec. 8, Ch. 237, L. 1961; amd. Sec. 43, Ch. 452, L. 1973; amd. Sec. 172, Ch. 253, L. 1974; R.C.M. 1947, 89-2918.

85-2-509. Administrative finding of priorities. (1) The department, at its discretion, or any person claiming a right to withdraw groundwater (whether or not from a controlled area) may initiate a hearing by the department for the ascertainment of all existing rights to the use of the groundwater in the ground area or subarea involved. The department shall produce at the hearing a map showing and describing all the lands included in the groundwater area or subarea and copies of all data upon which any prior designation or modification order was based. The waiving or assignment of rights by mutual agreement for either temporary or extended periods shall not modify or cancel the relative priorities of the rights.

(2) After January 1, 1962, in a hearing for the ascertainment and finding of priorities involving rights to the use of groundwaters, all appropriators of groundwater or of surface water in the particular controlled area or subarea shall be included as parties and notified in the manner provided in 85-2-506.

History: En. Sec. 6, Ch. 237, L. 1961; amd. Sec. 170, Ch. 253, L. 1974; R.C.M. 1947, 89-2916(1), (3).

85-2-510. Production of water from oil and gas wells — hearings — jurisdiction of board of oil and gas conservation. Within any designated or modified controlled groundwater area or subarea wherein oil and/or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil and/or gas withdrawals, such production of water shall be under the prior jurisdiction of the board of oil and gas conservation. Hearings pertaining to the production, use, or disposal of water from those wells shall be held by that board in accordance with the procedures established by that board. The department may petition the board of oil and gas conservation for hearings in regard to those operations, and it shall be notified by the board of oil and gas conservation of those hearings instigated by other parties when those hearings involve operations within a controlled groundwater area or subarea.

History: En. Sec. 6, Ch. 237, L. 1961; amd. Sec. 170, Ch. 253, L. 1974; R.C.M. 1947, 89-2916(2).

85-2-511. Scope of administrative hearing. (1) In a hearing for the ascertainment and finding of priorities to the use of groundwater, the department in its finding and order shall confirm, modify, alter, or amend any prior order designating and modifying the boundaries of the groundwater area or subarea involved, as the evidence justifies; shall determine the priority of rights and the quantity of groundwater to which each appropriator who is a party to the proceedings is entitled in the particular groundwater area or subarea; and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to groundwater. It may also determine the level below which the groundwater may not be drawn by appropriators. The department shall act in administering and enforcing the order, as provided in 85-2-507.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular groundwater area or subarea is located. If the order is not appealed, the order of the department shall be final and conclusive when it is published and mailed as provided for orders issued under 85-2-507.

History: En. Sec. 7, Ch. 237, L. 1961; amd. Sec. 42, Ch. 452, L. 1973; amd. Sec. 171, Ch. 253, L. 1974; R.C.M. 1947, 89-2917.

85-2-512. Investigations. (1) The department shall compile information for the purpose of enabling it to comply with this part. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, the department of health and environmental sciences, and any other private, state, or governmental agency.

(2) In addition to the foregoing, the department may request specific investigations by the preceding public agencies where desired information is not otherwise available.

History: En. Sec. 23, Ch. 237, L. 1961; amd. Sec. 179, Ch. 253, L. 1974; R.C.M. 1947, 89-2933.

85-2-513. Administration of oaths and subpoena of witnesses. The department may administer oaths and issue subpoenas for the attendance of witnesses in any investigation, hearing, or proceeding held by it.

History: En. Sec. 24, Ch. 237, L. 1961; amd. Sec. 180, Ch. 253, L. 1974; R.C.M. 1947, 89-2934.

85-2-514. Inspection of wells. The department, the state bureau of mines and geology, or the department of health and environmental sciences may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part.

History: En. Sec. 17, Ch. 237, L. 1961; amd. Sec. 174, Ch. 253, L. 1974; R.C.M. 1947, 89-2927.

85-2-515. Information available to public. Such information as is required or secured under the provisions hereof shall constitute public records and as such shall be available to the public at all reasonable times.

History: En. Sec. 18, Ch. 237, L. 1961; R.C.M. 1947, 89-2928.

85-2-516. Well logs. Within 60 days after any well is completed, the driller shall file with the department a well log report on a form provided by the department at its offices and at the offices of the county clerk and recorders. The department may return the report for refiling if it is incomplete or incorrect. The department shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.

History: En. 89-2928.1 by Sec. 44, Ch. 452, L. 1973; amd. Sec. 175, Ch. 253, L. 1974; R.C.M. 1947, 89-2928.1.

85-2-517. Reports by water well drillers. The forms, reports, and information required to be filed by this part are in addition to all other reports and information which the drillers of water wells in the state are required by law to file with agencies of the state.

History: En. Sec. 19, Ch. 237, L. 1961; amd. Sec. 48, Ch. 460, L. 1977; R.C.M. 1947, 89-2929.

85-2-518. Groundwater supervisors. The department may appoint one or more groundwater supervisors for each designated controlled area and may appoint one or more groundwater supervisors at large. Within their respective jurisdictions and under the direction of the department, the groundwater supervisors and supervisors at large shall supervise the withdrawal of groundwater and the carrying out of orders issued by the department.

History: En. Sec. 22, Ch. 237, L. 1961; amd. Sec. 178, Ch. 253, L. 1974; R.C.M. 1947, 89-2932.

85-2-519. Hearings before the board. (1) A person who is aggrieved by a final decision of the department under this part is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act governs administrative proceedings under this part.

History: En. 89-2934.1 by Sec. 45, Ch. 452, L. 1973; amd. Sec. 181, Ch. 253, L. 1974; R.C.M. 1947, 89-2934.1.

85-2-520. Penalties. Any person who violates or refuses or neglects to comply with any provision of this part or of any order or rule promulgated by the department or the board or who commits waste shall be guilty of a misdemeanor and upon conviction shall be fined not less than $25 or more than $250 for each offense.

History: En. Sec. 26, Ch. 237, L. 1961; amd. Sec. 182, Ch. 253, L. 1974; R.C.M. 1947, 89-2936.

Part 6

Yellowstone River Basin

85-2-601. Statement of legislative findings and policy. The legislature, noting that appropriations have been claimed, that applications have been filed for, and that there is further widespread interest in making substantial appropriations of water in the Yellowstone River basin, finds that these appropriations threaten the depletion of Montana's water resources to the significant detriment of existing and projected agricultural, municipal, recreational, and other uses and of wildlife and aquatic habitat. The legislature further finds that these appropriations foreclose the options to the people of this state to utilize water for other future beneficial purposes, including municipal water supplies, irrigation systems, and minimum flows for the protection of existing rights and aquatic life. The legislature, pursuant to its mandate and authority under Article IX of the Montana constitution, declares that it is the policy of this state that before these proposed appropriations are acted upon, existing rights to water in the Yellowstone basin must be accurately determined for their protection and that reservations of water within the basin must be established as rapidly as possible for the preservation and protection of existing and future beneficial uses.

History: **En. 89-8-103 by Sec. 1, Ch. 116, L. 1974; R.C.M. 1947, 89-8-103.**

85-2-602. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) (a) "Application" means an application for a permit under part 3 of this chapter to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

(i) a reservoir with a total planned capacity of 14,000 acre-feet or more; or

(ii) for a flow rate greater than 20 cubic feet of water per second.

(b) The term also includes an application for approval under 85-2-402 to change the purpose of use.

(2) "Basin" means the Yellowstone River basin.

(3) "Reservation" means a reservation of water provided for by 85-2-316.

History: **En. 89-8-104 by Sec. 2, Ch. 116, L. 1974; R.C.M. 1947, 89-8-104(Intro.), (2) thru (4).**

85-2-603. Suspension of action. (1) The department may not grant or otherwise take any action on an application until one of the following first occurs:

(a) The board of natural resources and conservation makes a final determination on the applications for reservations of water in the basin filed before January 1, 1977, in accordance with 85-2-316;

(b) A final determination of existing rights has been made in the source of supply in accordance with part 2 of this chapter; or

(c) January 1, 1978; however, if a court stays or enjoins the continuance of proceedings on any pending application for reservation of water in the basin filed before January 1, 1977, and such stay or injunction prevents the board from making a final determination on such application before January 1, 1978, the court shall extend this date by the length of delay incurred. The court may not extend this date beyond January 15, 1979.

(2) A reservation established before such application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, shall be issued subject to that preferred use.

History: **En. 89-8-105 by Sec. 3, Ch. 116, L. 1974; amd. Sec. 1, Ch. 26, L. 1977; R.C.M. 1947, 89-8-105.**

85-2-604. When department may suspend action. The department may suspend action on applications not meeting the definition of application in 85-2-602 if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that the cumulative impact of those applications, if granted, would be contrary to the policies and purposes of this part. If the department suspends action on such applications, the provisions of 85-2-603 apply.

History: **En. 89-8-106 by Sec. 4, Ch. 116, L. 1974; R.C.M. 1947, 89-8-106.**

85-2-605. Reservations. The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis shall be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

History: En. 89-8-107 by Sec. 5, Ch. 116, L. 1974; amd. Sec. 10, Ch. 416, L. 1977; R.C.M. 1947, 89-8-107.

85-2-606. Application of part. This part applies to applications currently pending with the department, as well as applications filed with the department after March 11, 1974.

History: En. 89-8-108 by Sec. 6, Ch. 116, L. 1974; R.C.M. 1947, 89-8-108.

85-2-607. Utility facilities. This part does not apply to applications to appropriate water for use by a utility facility for which a certificate of environmental compatibility and public need is granted pursuant to the Montana Major Facility Siting Act.

History: En. 89-8-109 by Sec. 7, Ch. 116, L. 1974; R.C.M. 1947, 89-8-109.

85-2-608. Certain changes of use allowed. Notwithstanding any provision of this part, the department may approve a change of purpose of use to agricultural, irrigation, domestic, and municipal uses if it determines that the change is not contrary to the policies and purposes of this part.

History: En. 89-8-110 by Sec. 8, Ch. 116, L. 1974; R.C.M. 1947, 89-8-110.

Part 7

Indian and Federal Water Rights

85-2-701. Legislative intent. Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

History: En. Sec. 27, Ch. 697, L. 1979.

Compiler's Comments

Purpose. Subsection (1) of sec. 1, Ch. 697, L. 1979, provided: "[This act] amends the Montana Water Use Act to expedite and facilitate the adjudication of existing water rights."

Codification. Sec. 35, Ch. 697, L. 1979, provided: "(1) Sections 1 through 10 of this act are intended to be codified as an integral part of Title 3, and the provisions contained in Title 3 apply to this act.

(2) Sections 11 through 27 are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions contained in Title 85, chapter 2, apply to this act.

(3) If the provisions of this act are not codified as stated above, the code commissioner

shall add to the MCA, if necessary, statutory language to convey the intent of this section."

Because of rearrangement of the new material, Ch. 697 is now codified in Title 3, chapter 7; Title 85, chapter 2, parts 2 and 7; and 2-15-212.

Effective date. "This act is effective on passage and approval." Approved May 11, 1979.

Severability. Section 36, Ch. 697, L. 1979, was a severability section.

85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana, any affected tribal governing body, and the congress of the United States.

History: En. Sec. 27, Ch. 697, L. 1979.

Compiler's Comments

Commissioner correction. Because of rearrangement of sec. 27, Ch. 697, L. 1979, the Code Commissioner, 1979, changed "The compact commission" to "The reserved water rights compact commission, created by 2-15-212," in subsection (1).

85-2-703. Negotiation with federal government. The compact commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters within the state. The terms and conditions of such negotiations shall be the same as provided in this section for negotiations with Indian tribes.

History: En. Sec. 27, Ch. 697, L. 1979.

85-2-704. Termination of negotiations. The commission or any other party to the negotiations may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate.

History: En. Sec. 27, Ch. 697, L. 1979.

CHAPTER 3

ATMOSPHERIC WATER
WEATHER MODIFICATION

Part 1 — General Provisions

Section
85-3-101. Definitions.
85-3-102. Standards for research in weather modification control.

85-3-103. Department powers.
85-3-104. Nonliability of state and agents for acts of private persons.
85-3-105. Violation as misdemeanor and continuing violations.

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85-3-201. License and permit required for weather modification and control.
85-3-202. Department to review applications.
85-3-203. Licenses — qualifications of licensees.
85-3-204. Licenses — term and renewal.
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85-3-212. Permit fee.
85-3-213. Earmarked revenue fund.
85-3-214. Termination of licenses and permits by board.

Part 3 — Records

85-3-301. Records of operations maintained by licensees.
85-3-302. Reports of operations.
85-3-303. Records and reports open to public.

Part 1

General Provisions

85-3-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding 1 year.

(4) "Research and development" means theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(5) "Weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 20, L. 1967; amd. Sec. 1, Ch. 368, L. 1973; amd. Sec. 140, Ch. 253, L. 1974; Sec. 89-310, R.C.M. 1947; (3)En. Sec. 10, Ch. 20, L. 1967; amd. Sec. 5, Ch. 460, L. 1977; Sec. 89-319, R.C.M. 1947; R.C.M. 1947, 89-310, 89-319(2).

85-3-102. Standards for research in weather modification control. The board may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it deems necessary or desirable to minimize danger to health, safety, welfare, or property.

History: En. Sec. 3, Ch. 368, L. 1973; amd. Sec. 141, Ch. 253, L. 1974; R.C.M. 1947, 89-312.1.

85-3-103. Department powers. In addition to any other acts authorized by law, the department may:

(1) acquire materials, equipment, and facilities as are necessary to perform its duties under this chapter;

(2) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, expend the funds for the administration of this chapter;

(3) make such studies and investigations and obtain such information as the department may deem necessary in exercising its authority in the administration or enforcement of this chapter;

(4) cooperate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this chapter;

(5) represent the state in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control;

(6) enter into cooperative agreements with the United States government or any of its agencies, with the various counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud seeding operations;

(7) act for and represent the state and the counties, cities, and private or public agencies in contracting with private concerns for the performance of weather modifications or cloud seeding operations; and

(8) conduct and make arrangements, including contracts and agreements, for the conduct of research and development activities relating to:

(a) the identification and evaluation of meteorological, environmental, ecological, agricultural, economic, hydrological, and sociological impacts of weather modification in Montana;

(b) the theory and development of methods of weather modification and control, including processes, materials, and devices relating thereto;

(c) the utilization of weather modification and control for agricultural, industrial, commercial, recreational, and other purposes;

(d) the protection of life and property during research and operational activities.

History: En. Sec. 3, Ch. 20, L. 1967; amd. Sec. 2, Ch. 368, L. 1973; R.C.M. 1947, 89-312.

85-3-104. Nonliability of state and agents for acts of private persons. Nothing in this chapter shall be construed to impose or accept any liability or responsibility on the part of the state, the board, the department, or any state officials or employees for any weather modification and control activities of any private person or group.

History: En. Sec. 21, Ch. 20, L. 1967; amd. Sec. 152, Ch. 253, L. 1974; R.C.M. 1947, 89-330.

85-3-105. Violation as misdemeanor and continuing violations. A person violating any provision of this chapter is guilty of a misdemeanor, and a continuing violation is punishable as a separate offense for each day during which it occurs.

History: En. Sec. 22, Ch. 20, L. 1967; R.C.M. 1947, 89-331.

Part 2

Licenses and Permits

85-3-201. License and permit required for weather modification and control. No person shall engage in activities for weather modification and control except under and in accordance with a license and a permit issued by the board authorizing such activities.

History: En. Sec. 4, Ch. 20, L. 1967; R.C.M. 1947, 89-313.

85-3-202. Department to review applications. The department shall review all applications for weather modification activities, and the board may provide by rule for exempting from the license and permit requirements of this chapter:

(1) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail.

History: En. Sec. 5, Ch. 20, L. 1967; amd. Sec. 4, Ch. 368, L. 1973; amd. Sec. 142, Ch. 253, L. 1974; R.C.M. 1947, 89-314.

85-3-203. Licenses — qualifications of licensees. The license to engage in activities for weather modification and control shall be issued, in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this chapter, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the board. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant.

History: En. Sec. 6, Ch. 20, L. 1967; R.C.M. 1947, 89-315.

85-3-204. Licenses — term and renewal. The license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of the period.

History: En. Sec. 7, Ch. 20, L. 1967; R.C.M. 1947, 89-316.

85-3-205. License or renewal fee. A license shall be issued or renewed only upon the payment to the department of $100 for the license or renewal.

History: En. Sec. 8, Ch. 20, L. 1967; amd. Sec. 143, Ch. 253, L. 1974; R.C.M. 1947, 89-317.

85-3-206. Permits — requirements and hearing. (1) The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter, only if:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention is published;

(c) an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in 85-3-211;

(d) the fee for the permit is paid as required in 85-3-212;

(e) the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good.

(2) If the board determines that a hearing is necessary, the department shall hold a public hearing in the area to be affected by the issuance of the permit. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing.

History: En. Sec. 9, Ch. 20, L. 1967; amd. Sec. 1, Ch. 214, L. 1973; amd. Sec. 5, Ch. 368, L. 1973; amd. Sec. 144, Ch. 253, L. 1974; amd. Sec. 1, Ch. 46, L. 1977; R.C.M. 1947, 89-318.

85-3-207. Separate permit for each operation. (1) Separate permits shall be issued for each operation.

(2) If a permit is issued, the holder of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to any conditions imposed by the board. The permit may not be sold or transferred.

History: (1)En. Sec. 10, Ch. 20, L. 1967; amd. Sec. 5, Ch. 460, L. 1977; Sec. 89-319, R.C.M. 1947; (2)En. Sec. 11, Ch. 20, L. 1967; amd. Sec. 145, Ch. 253, L. 1974; amd. Sec. 2, Ch. 46, L. 1977; Sec. 89-320, R.C.M. 1947; R.C.M. 1947, 89-319(1), 89-320(part).

85-3-208. Notice of intention to apply for permit. Before undertaking any weather modification and control activities, the applicant for a permit shall file with the department a notice of intention.

History: En. Sec. 11, Ch. 20, L. 1967; amd. Sec. 145, Ch. 253, L. 1974; amd. Sec. 2, Ch. 46, L. 1977; R.C.M. 1947, 89-320(part).

85-3-209. Notice of intention — contents. The notice of intention shall set forth at least the following:

(1) the name and address of the applicant;

(2) the nature, purpose, and objective of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which and the approximate time during which the operation will be conducted;

(4) the area which is intended to be affected by the operation;

(5) the materials and methods to be used in conducting the operation.

History: En. Sec. 12, Ch. 20, L. 1967; R.C.M. 1947, 89-321.

85-3-210. Publication of notice of intention. (1) The department shall have the notice of intention, or that portion thereof including the items specified in 85-3-209, published at least once a week for 2 consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) The applicant shall reimburse the department for the costs of publication of the notice of intention.

History: En. Sec. 12, Ch. 20, L. 1967; amd. Sec. 146, Ch. 253, L. 1974; amd. Sec. 3, Ch. 46, L. 1977; R.C.M. 1947, 89-322.

85-3-211. Proof of financial responsibility by applicant. Proof of financial responsibility may be furnished by an applicant by his showing, to the satisfaction of the board, ability to respond in damages for liability which might reasonably be attached to or result from his weather modification and control activities.

History: En. Sec. 14, Ch. 20, L. 1967; R.C.M. 1947, 89-323.

85-3-212. Permit fee. The fee to be paid by each applicant for a permit shall be equivalent to 1% of the estimated cost of such operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of issuance of the permit by the board; however, if the applicant is able to give satisfactory security for the payment of the balance he may be permitted to commence the operation and a permit may be issued therefor upon the payment of not less than 50% of the fee. The balance due shall be paid within 3 months from the date of termination of the operation as prescribed in the permit.

History: En. Sec. 15, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 147, Ch. 253, L. 1974; R.C.M. 1947, 89-324.

85-3-213. Earmarked revenue fund. All license and permit fees and fines collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in the administration of this chapter.

History: En. Sec. 16, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 148, Ch. 253, L. 1974; amd. Sec. 1, Ch. 147, L. 1975; R.C.M. 1947, 89-325.

85-3-214. Termination of licenses and permits by board. After notice to the licensee and a reasonable opportunity for a hearing, the board may modify, suspend, revoke, or refuse to renew any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary or if it appears that the licensee has violated any of the provisions of this chapter, or in the case of a modification, that it is necessary for the protection of the health or the property of any person.

History: En. Sec. 20, Ch. 20, L. 1967; R.C.M. 1947, 89-329.

Part 3

Records

85-3-301. Records of operations maintained by licensees. Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

(1) the method employed;
(2) type of equipment used;
(3) kinds and amounts of material used;
(4) times and places of operation of the equipment;
(5) names and addresses of all individuals participating or assisting in the operation;
(6) any other general information as the department may require.

History: En. Sec. 17, Ch. 20, L. 1967; amd. Sec. 149, Ch. 253, L. 1974; R.C.M. 1947, 89-326.

85-3-302. Reports of operations. The department shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The department shall also require reports from any organization that is exempt from license and permit requirements as provided in 85-3-202.

History: En. Sec. 18, Ch. 20, L. 1967; amd. Sec. 150, Ch. 253, L. 1974; R.C.M. 1947, 89-327.

85-3-303. Records and reports open to public. The records and reports in the custody of the department shall be open for public examination.

History: En. Sec. 19, Ch. 20, L. 1967; amd. Sec. 151, Ch. 253, L. 1974; R.C.M. 1947, 89-328.

CHAPTER 4

RESERVED

CHAPTER 5

WATER COMMISSIONERS

Part 1 — Appointment and Duties

Section

85-5-101. Appointment of water commissioners.
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Part 1

Appointment and Duties

85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners. The commissioners shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under chapter 2 of this title, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) At the time of the appointment of such water commissioner or commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters shall pay their proportionate share of such fees and compensation.

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir which is turned into

the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute such stored water to said irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of such stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection.

History: En. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1925; re-en. Sec. 7136, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975; R.C.M. 1947, 89-1001(1) thru (3), (5), (6); amd. Sec. 1, Ch. 444, L. 1979.

85-5-102. Appointment of chief commissioner. When the judge of the district court shall appoint two or more commissioners to admeasure and distribute the waters mentioned in the preceding section, he may appoint one of them chief commissioner and empower him to exercise direction and control over the other or others in the discharge of their duties. The judge may depose the one appointed chief commissioner from that position and appoint another in his stead whenever it appears to the judge that better service may be given the water users by making the change.

History: En. Sec. 2, Ch. 43, L. 1911; re-en. Sec. 7137, R.C.M. 1921; re-en. Sec. 7137, R.C.M. 1935; R.C.M. 1947, 89-1002.

85-5-103. Oath and bond. Each water commissioner so appointed by the court shall subscribe and file with the clerk of the district court an oath of office before commencing the discharge of his duties as commissioner and shall likewise file with said clerk a bond executed by himself, with two or more sureties, in such sum as the judge of said court may designate, to insure the faithful discharge of his duties.

History: En. Sec. 3, Ch. 43, L. 1911; amd. Sec. 1, Ch. 12, Ex. L. 1919; re-en. Sec. 7138, R.C.M. 1921; re-en. Sec. 7138, R.C.M. 1935; R.C.M. 1947, 89-1003.

85-5-104. Term of office. Every water commissioner so appointed shall hold his office for such time during the irrigation season of each year as may be designated by the judge in the order making such appointment. The judge, in his discretion, shall fix the date of the commencement of such term and may, in his discretion or when requested in writing by at least three persons entitled to the use of such waters, change the term for closing of the commissioner's service.

History: En. Sec. 4, Ch. 43, L. 1911; amd. Sec. 1, Ch. 116, L. 1921; re-en. Sec. 7139, R.C.M. 1921; re-en. Sec. 7139, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1955; R.C.M. 1947, 89-1004.

85-5-105. Power and duty to distribute water. Upon the issuance of such order, the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof, as their interests may appear and be required, the stored and supplemental waters stored and as released by the department of natural resources and conservation under provisions of chapter 1 of this title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed. Such water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter and all acts amendatory thereof and supplemental thereto; provided, that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of parts 1 through 3 of this chapter is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters.

History: En. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1925; re-en. Sec. 7136, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975; R.C.M. 1947, 89-1001(4).

85-5-106. Maintenance and repair of ditches or systems. Upon written request of the owners of at least 51% of the water rights in any adjudicated ditch or single water system, the judge of the district court may empower the commissioner to maintain and keep in reasonable repair such water ditch or water system at the expense of the owners thereof, and for such purposes the commissioner shall have authority to enter and work upon any ditch, canal, aqueduct, or other source of conveying the waters affected by the decree and the right-of-way thereof and to visit, inspect, and adjust all headgates or other means of distribution of such waters.

History: En. Sec. 6, Ch. 43, L. 1911; re-en. Sec. 7141, R.C.M. 1921; re-en. Sec. 7141, R.C.M. 1935; R.C.M. 1947, 89-1006.

85-5-107. Record of daily distribution of water. Each water commissioner must keep a daily record of the amount of water distributed to each water user and must file a summary of such record with the clerk of the court monthly, during his term of service, showing in detail the total amount of water distributed to each water user during such month daily and the amount of cost therefor, based upon the water commissioner's or commissioners' salary per day and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge, they may file a joint summary of their record with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary in behalf of all of them.

History: En. Sec. 9, Ch. 43, L. 1911; re-en. Sec. 7144, R.C.M. 1921; re-en. Sec. 7144, R.C.M. 1935; R.C.M. 1947, 89-1009.

85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of parts 1 through 3 of this chapter, each commissioner appointed by the court shall have authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and shall have the same powers as a sheriff or constable to arrest any and all persons interfering with the distribution made by him, to be dealt with according to law.

History: En. Sec. 8, Ch. 43, L. 1911; re-en. Sec. 7143, R.C.M. 1921; re-en. Sec. 7143, R.C.M. 1935; R.C.M. 1947, 89-1008.

85-5-109. Failure to perform duty as a contempt of court. If any commissioner shall fail to perform any of the duties imposed upon him by the order of the judge of the district court, he shall be deemed guilty of a contempt of said court.

History: En. Sec. 7, Ch. 43, L. 1911; re-en. Sec. 7142, R.C.M. 1921; re-en. Sec. 7142, R.C.M. 1935; R.C.M. 1947, 89-1007.

Part 2

Charges and Expenses

85-5-201. Distribution of water and related expenses. Every water commissioner appointed by the judge of the district court for that purpose shall have the authority to admeasure and distribute to the parties interested, under such decree or decrees, the water to which those who are parties to the decree or decrees, or privy thereto, are entitled, according to their priority as established by the decree or decrees. The water commissioner, in case the parties fail or refuse to do so, may incur necessary expenses in the making of headgates or dams for the distribution of the waters. Such expense shall be assessed against and paid by the party or parties for whom such services in the repair of the ditch or ditches and the making of any dams or headgates were necessary. In the discretion of the court, such costs or expenses may be assessed against the land upon which or for the benefit of which such expense had been incurred.

History: En. Sec. 5, Ch. 43, L. 1911; re-en. Sec. 7140, R.C.M. 1921; amd. Sec. 2, Ch. 125, L. 1925; re-en. Sec. 7140, R.C.M. 1935; R.C.M. 1947, 89-1005.

85-5-202. Repair expenses. The judge may also allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of his duties in the employment of extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is necessary to preserve the rights of the parties entitled to the waters of such stream or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all such expenses, and the cost thereof shall be taxed against the party or parties for whose benefit the same were incurred. In the discretion of the court, such costs or expenses may be assessed against the land upon which or for the benefit of which such expense had been incurred.

History: En. Sec. 10, Ch. 43, L. 1911; re-en. Sec. 7145, R.C.M. 1921; amd. Sec. 3, Ch. 125, L. 1925; re-en. Sec. 7145, R.C.M. 1935; R.C.M. 1947, 89-1010.

85-5-203. Telephone expenses. The judge may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the judge for instructions in cases of emergency. When there are two or more commissioners acting under the judge's order, reasonable expenses incurred in communicating with each by telephone or with the judge of the district court, in order to carry on the distribution of the waters harmoniously and in accordance with the decree, shall be deemed a necessary expense. These expenses shall be reported by the water commissioner or commissioners at the close of the season and shall be taxed against all the water users affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during the season.

History: En. Sec. 11, Ch. 43, L. 1911; re-en. Sec. 7146, R.C.M. 1921; re-en. Sec. 7146, R.C.M. 1935; R.C.M. 1947, 89-1011.

85-5-204. Apportionment of fees and expenses. (1) Upon the filing of the report by the water commissioner or water commissioners, the clerk of court shall forthwith notify by letter each person mentioned in such report:

(a) of the amount he is made liable for by such report;

(b) that objections to such report and the amount so taxed against him may be made by any person interested therein within 20 days after the date of the mailing of said notice; and

(c) unless objections thereto are filed, an order will be made by the judge of said court finally fixing and determining the amount due from each of said water users.

(2) The affidavit of the clerk that he has mailed a notice to each person mentioned in the report at such person's last known post-office address, in the usual manner, shall be deemed prima facie evidence that the person received that notice provided for in this section.

History: En. Sec. 12, Ch. 43, L. 1911; re-en. Sec. 7147, R.C.M. 1921; amd. Sec. 1, Ch. 11, L. 1923; amd. Sec. 1, Ch. 45, L. 1927; re-en. Sec. 7147, R.C.M. 1935; R.C.M. 1947, 89-1012.

85-5-205. Objections to expenses — hearing. At the expiration of the 20 days' notice, as provided for in the preceding section, if objections to said report have been filed or a motion to retax the same has been made, the court or judge shall fix a time for the hearing of such objections or motion to retax, which time of hearing shall be as soon as the judge or a court can conveniently hear the same. Any person objecting to said report shall be entitled to at least 5 days' notice of the date and time of such hearing. At such hearing the court or judge shall hear and determine the motion or objections and shall make an order fixing and determining the amount found due from each of said water users to such commissioner or commissioners. In case no objections are filed within the 20 days, as hereinbefore provided for, such order shall be made as a matter of course, and in either case said order shall be final determination of the matter.

History: En. Sec. 13, Ch. 43, L. 1911; re-en. Sec. 7148, R.C.M. 1921; amd. Sec. 2, Ch. 11, L. 1923; re-en. Sec. 7148, R.C.M. 1935; R.C.M. 1947, 89-1013.

85-5-206. Effect of order fixing fees. After the order of the court fixing the fees and compensation and expenses of the water commissioner is final, it shall have all the force and effect of a judgment as against the person to whom the water was admeasured and for whose benefit it was used. When such expense of commissioner or commissioners has been assessed against the land for which such service of the commissioner or commissioners has been rendered, it shall constitute a lien against said land. Execution may issue upon the order, as upon a judgment, by direction of the court or judge upon the application of any person interested therein. The water commissioner, at his discretion, may withhold further admeasurement or distribution of water to any person otherwise entitled thereto until such person shall have paid all fees, compensation, and expenses of such water commissioner or commissioners so fixed by the court and apportioned and charged to such person and likewise may withhold the admeasurement and distribution of water from any land against which there exists any such lien as aforesaid, until such lien shall have been fully discharged.

History: En. Sec. 14, Ch. 43, L. 1911; re-en. Sec. 7149, R.C.M. 1921; amd. Sec. 4, Ch. 125, L. 1925; amd. Sec. 1, Ch. 39, L. 1929; re-en. Sec. 7149, R.C.M. 1935; R.C.M. 1947, 89-1014.

Part 3

Rights and Duties of Water Users

85-5-301. Complaint by dissatisfied user. (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than he is receiving or to a right prior to that allowed him by the water commissioner or water commissioners may file his written complaint, duly verified, setting forth the facts of the claim. Thereupon the judge shall fix a time for the hearing of such petition and shall direct that such notice be given to the parties interested in the hearing as the judge considers necessary. At the time fixed for the hearing, the judge must hear and examine the complainant and other parties as may appear to support or resist such claim and examine the water commissioner or water commissioners and witnesses as to the charges contained in the complaint.

(2) Upon the determination of the hearing, the judge shall make such findings and order as he considers just and proper. If it appears to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, the judge shall give the proper instructions for such distribution. The judge may remove any water commissioner and appoint some other person in his stead if he considers that the interests of the parties in the waters mentioned in the decree will be best subserved thereby, and if it appears to the judge that the water commissioner has willfully failed to perform his duties, he may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make such order as to the payment of costs of the hearing as appears to him to be just and proper.

History: En. Sec. 15, Ch. 43, L. 1911; re-en. Sec. 7150, R.C.M. 1921; amd. Sec. 5, Ch. 125, L. 1925; re-en. Sec. 7150, R.C.M. 1935; amd. Sec. 13, Ch. 460, L. 1977; R.C.M. 1947, 89-1015.

85-5-302. Maintenance of headgates and measuring devices. All persons using water under a decree from any stream or ditch whereon a water commissioner is appointed shall be required to have suitable headgates at the point wherein a ditch taps a stream and shall also, at some suitable place on the ditch and as near the head thereof as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in such ditch. In case any person or persons shall fail to place or maintain a proper measuring appliance, it shall be the duty of such water commissioner not to apportion or distribute any water through said ditch. The commissioner must notify all parties interested by registered or certified mail or in person 1 week before making the annual repair or cleaning of any stream or ditch or performing necessary labor or expenses to divert water to any ditch. The sending of a registered or certified letter to the last known post-office address of any such interested party will be prima facie evidence of the fact that he was duly notified. Any work in the way of repairing a ditch made necessary by any emergency may be done without such notice when injury would result from delay.

History: En. Sec. 7, Ch. 64, L. 1905; re-en. Sec. 4890, Rev. C. 1907; re-en. Sec. 7151, R.C.M. 1921; amd. Sec. 6, Ch. 125, L. 1925; re-en. Sec. 7151, R.C.M. 1935; R.C.M. 1947, 89-1016.

Part 4

Water Ditches Under Joint or Corporate Control

85-5-401. Determination of water rights between partners, tenants in common, and corporate stockholders. Whenever a water ditch used for irrigating purposes is owned by a partnership, tenants in common, or corporation and there is any dispute between the respective owners, tenants in common, or stockholders respecting the use and division of the waters flowing in said ditch, any partner, tenant in common, or stockholder may commence an action in any court of competent jurisdiction to determine the rights of the respective parties to the use of said waters and may join in his petition a prayer for the appointment of a water commissioner to apportion and distribute the waters of said ditch according to the rights of the respective owners, tenants in common, or stockholders during the pendency of the action.

History: En. Sec. 1, Ch. 181, L. 1919; re-en. Sec. 7152, R.C.M. 1921; re-en. Sec. 7152, R.C.M. 1935; R.C.M. 1947, 89-1017.

85-5-402. Appointment of commissioner prior to final decree. After the filing of the complaint in such action, the court may, upon 5 days' notice to the other parties to the action, appoint a commissioner to divide and distribute the waters of said ditch to the respective parties, according to their respective rights, during the pendency of the action. The court may, upon good cause shown, appoint such commissioner without notice, and when such commissioner is appointed without notice, any party to the action may, on 5 days' notice to the plaintiff, move the court or judge to vacate such appointment or to modify the order as to the distribution of the waters of said ditch. The court or judge on such hearing, in his discretion, may affirm, vacate, or modify the order previously made. Each water commissioner so appointed shall subscribe to an oath of office before commencing the discharge of his duties.

History: Ap. p. Sec. 2, Ch. 181, L. 1919; re-en. Sec. 7153, R.C.M. 1921; re-en. Sec. 7153, R.C.M. 1935; Sec. 89-1018, R.C.M. 1947; Ap. p. Sec. 3, Ch. 181, L. 1919; re-en. Sec. 7154, R.C.M. 1921; re-en. Sec. 7154, R.C.M. 1935; Sec. 89-1019, R.C.M. 1947; R.C.M. 1947, 89-1018, 89-1019(part).

85-5-403. Division of water. It shall be the duty of the water commissioner to divide the waters of said ditch between the owners, tenants in common, or stockholders in proportion to their respective rights, as set forth in the complaint or in such other manner or proportion as the court or judge may direct.

History: En. Sec. 3, Ch. 181, L. 1919; re-en. Sec. 7154, R.C.M. 1921; re-en. Sec. 7154, R.C.M. 1935; R.C.M. 1947, 89-1019(part).

85-5-404. Authority of commissioner. Such commissioner shall have authority to enter upon said ditch; open, close, and set headgates; and do whatever else is necessary to apportion and distribute the waters of said ditch to the respective parties according to their respective rights.

History: En. Sec. 4, Ch. 181, L. 1919; re-en. Sec. 7155, R.C.M. 1921; re-en. Sec. 7155, R.C.M. 1935; R.C.M. 1947, 89-1020.

85-5-405. Compensation and expenses. The court shall fix the compensation of such commissioner and the term of his employment and shall make an order apportioning the amount of such compensation among the several owners, tenants in common, or stockholders of said ditch, according to their respective rights and interest in said ditch, which amounts so apportioned shall be taxed as costs in the action against the respective parties.

History: En. Sec. 5, Ch. 181, L. 1919; re-en. Sec. 7156, R.C.M. 1921; re-en. Sec. 7156, R.C.M. 1935; R.C.M. 1947, 89-1021.

85-5-406. Interference with actions of commissioner. Any person opening or closing a headgate after being set by such commissioner or who in any manner interferes with such commissioner in the discharge of his duties shall be deemed guilty of contempt of court and may be proceeded against for contempt of court as provided in contempt cases.

History: En. Sec. 6, Ch. 181, L. 1919; re-en. Sec. 7157, R.C.M. 1921; re-en. Sec. 7157, R.C.M. 1935; R.C.M. 1947, 89-1022.

85-5-407. Appointment of water commissioner after final decree. When the rights of the respective parties in said action to the use of the waters flowing in said ditch shall be adjudicated, the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 10% of the waters of said ditch, may, in the exercise of his discretion, appoint a water commissioner to divide, apportion, and distribute the waters of said ditch to the respective parties according to their respective rights as set forth in such decree. When a commissioner is appointed under the provisions of 85-5-101 through 85-5-301 to apportion and distribute the waters of the stream from which the water flowing in said ditch is taken, such commissioner shall, when so directed by the judge or court, apportion and distribute the waters of said ditch according to the decree by which the rights of the respective owners were adjudicated.

History: En. Sec. 7, Ch. 181, L. 1919; re-en. Sec. 7158, R.C.M. 1921; re-en. Sec. 7158, R.C.M. 1935; R.C.M. 1947, 89-1023.

85-5-408. Apportionment of costs. (1) When a commissioner is appointed upon the application of an owner or owners of such ditch, the court may fix the compensation of such commissioner and the term of his employment. The court shall make an order apportioning the amount of such compensation among the several owner or owners, tenants in common, or stockholders of said ditch according to their respective rights and interest, which order shall have the force and effect of a judgment against the person to whom the water was admeasured and for whose benefit it was used. When, in the discretion of the court, such order of apportionment of expense is made against the land for which such water was used, it shall have the force and effect of a lien against said land to which such apportionment was made.

Execution may issue upon such order as upon a judgment by direction of the court, upon the application of any person interested therein.

(2) When a commissioner is appointed under the provisions of 85-5-101 through 85-5-301 to distribute the waters of the stream from which the waters flowing in said ditch are taken and to apportion and distribute the waters of said ditch according to the rights of the respective owners thereof, the judge, in his discretion, may, in addition to the apportionment taxed against the respective owners of the waters of said stream, apportion and tax the amount, if any, the owners of such ditch shall pay in addition to the amount taxed under the provisions of 85-5-101 through 85-5-301.

History: En. Sec. 8, Ch. 181, L. 1919; re-en. Sec. 7159, R.C.M. 1921; amd. Sec. 7, Ch. 125, L. 1925; re-en. Sec. 7159, R.C.M. 1935; R.C.M. 1947, 89-1024.

CHAPTER 6

WATER USERS' ASSOCIATIONS

Part 1 — General Provisions

Section
85-6-101. Power to levy new assessments.
85-6-102. Assessments to be equitable.
85-6-103. Transfer of shares of stock.
85-6-104. Assessment of shares of stock.
85-6-105. Division of irrigation project into districts.
85-6-106. Vacancies in board of directors.
85-6-107. Liability of associations.
85-6-108. Exemption from payment of fees.
85-6-109. Operation of projects with water users' association.

Part 1

General Provisions

85-6-101. Power to levy new assessments. Whenever any water users' association, having a contract with the United States government for construction of works and delivery of water and also a contract with its shareholders, organized under and by virtue of the corporation laws of this state and in conformity with the laws of the United States, shall have levied an assessment or assessments upon its capital stock, which assessment or assessments or any part thereof remain uncollected, such association shall have the power to discharge all assessments theretofore levied and to levy in lieu thereof an assessment which shall include all previous assessments levied upon the shareholders of said association and to give credit for all payments on assessments theretofore made.

History: En. Sec. 1, Ch. 141, L. 1917; re-en. Sec. 7160, R.C.M. 1921; re-en. Sec. 7160, R.C.M. 1935; R.C.M. 1947, 89-1101.

85-6-102. Assessments to be equitable. All assessments authorized hereunder shall be equitable and be based upon benefits received or available.

History: En. Sec. 2, Ch. 141, L. 1917; re-en. Sec. 7161, R.C.M. 1921; re-en. Sec. 7161, R.C.M. 1935; R.C.M. 1947, 89-1102.

85-6-103. Transfer of shares of stock. Shares of stock of water users' associations organized in conformity with the requirements of the laws of the United States and the state of Montana and under the Reclamation Act of June 17, 1902, (which shares of stock, by the articles of incorporation of said association, are inseparably appurtenant to the lands for which they are subscribed) shall, upon the presentation of proof to such association of the transfer of any of said land, be transferred on the books of said association, by the proper officers of the association, to the grantee or successor in title to said land.

History: En. Sec. 1, Ch. 29, L. 1915; re-en. Sec. 7162, R.C.M. 1921; re-en. Sec. 7162, R.C.M. 1935; R.C.M. 1947, 89-1103.

85-6-104. Assessment of shares of stock. The assessable stock of any such water users' association may at the time of any assessment made, after the major portion of such irrigation project is completed and the irrigable area thereunder determined, be one share for each irrigable acre, and appropriate bylaws of the association may provide for the discharge of assessments levied on stock appurtenant to lands then determined to be nonirrigable.

History: En. Sec. 2, Ch. 29, L. 1915; re-en. Sec. 7163, R.C.M. 1921; re-en. Sec. 7163, R.C.M. 1935; R.C.M. 1947, 89-1104.

85-6-105. Division of irrigation project into districts. Such water users' association shall be permitted to divide the area under such irrigation project into as many districts as there are directors provided for in its articles of incorporation. Each district shall elect one director for a term not to exceed 5 years. At the first election held to elect directors under the provisions of this chapter, each district shall elect one director, who shall hold office for such a term of years as the bylaws shall provide, and thereafter a director shall be elected in the district and at the annual election held just prior to the expiration of the term of office of the director of that district.

History: En. Sec. 3, Ch. 29, L. 1915; re-en. Sec. 7164, R.C.M. 1921; re-en. Sec. 7164, R.C.M. 1935; R.C.M. 1947, 89-1105.

85-6-106. Vacancies in board of directors. In case of a vacancy in the board of directors from any cause, the board shall fill such vacancy by appointment to hold to the end of that fiscal year, and a director shall be elected at the annual election in the district where such vacancy occurs to fill the unexpired term of such vacancy.

History: En. Sec. 4, Ch. 29, L. 1915; re-en. Sec. 7165, R.C.M. 1921; re-en. Sec. 7165, R.C.M. 1935; R.C.M. 1947, 89-1106.

85-6-107. Liability of associations. An incorporated water users' association that is sustaining and responsible for the operations of a works is solely liable for any court action which may be brought against it for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions. The state of Montana is not liable for injury to a person or property that occurs on a works as a result of a failure by a water users' association to maintain the works in a safe working and operating condition.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(2).

85-6-108. Exemption from payment of fees. Any water users' association organized in conformity with the requirements of the laws of the United States and of the state of Montana, under the Reclamation Act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders shall be exempt from the payment of any license fee and from the payment of any annual license tax and, upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of $40 for the filing and recording of such articles of incorporation and the issuance of certificate of incorporation.

History: En. Sec. 1, Ch. 66, L. 1905; re-en. Sec. 167, Rev. C. 1907; re-en. Sec. 147, R.C.M. 1921; re-en. Sec. 147, R.C.M. 1935; amd. Sec. 9, Ch. 117, L. 1961; R.C.M. 1947, 25-110; amd. Sec. 1, Ch. 326, L. 1979.

85-6-109. Operation of projects with water users' association. (1) As used in this section, "department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33, and "association" means a water users' association.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association shall be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the board of natural resources and conservation as provided for in 85-1-212. The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in the district court in any county where all or part of the project works is located or in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon a project which involves an association, the department shall notify the association. If, within 30 days of receipt of the notice of abandonment, stockholders of the association representing 15% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned without the consent of the legislature.

History: En. 89-1107 by Sec. 1, Ch. 253, L. 1977; R.C.M. 1947, 89-1107.

CHAPTER 7

IRRIGATION DISTRICTS

Part 1 — Creation of Districts—Generally

Section
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85-7-2141. Proceeds of certain bonds.
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85-7-2152. Proceeds of sale.
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85-7-2203. Procedure on appeal.
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Part 1

Creation of Districts — Generally

85-7-101. Creation of irrigation districts by percentage of titleholders. (1) Sixty per centum in number of the holders of title or evidence of title to lands sought to be included in an irrigation district and which are susceptible of irrigation, such holders of title or evidence of title also representing 60% of the acreage of said lands, may propose the establishment and organization of an irrigation district under the provisions of this part and part 15. When any of such land sought to be included in such irrigation district is covered by mortgage or other lien, then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district.

(2) Irrigation districts may be formed in order to cooperate with the United States under the federal reclamation laws heretofore or hereafter enacted or under any act of congress which shall permit of the performance by the United States of work in this state for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred by law upon such irrigation district. In all irrigation districts organized in connection with United States reclamation projects, a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of this part may propose the establishment and organization of such district.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(1).

85-7-102. Evidence of title. The certificate of the county clerk and recorder or the certificate of the department of state lands shall be sufficient evidence of title for the purpose of this chapter. Where lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the state to such lands have not been issued, the receipt or receipts held by the purchasers or the certificate of the department of state lands showing the payments on account of purchase shall be evidence of title to such lands under this chapter.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(2).

85-7-103. Report by department of natural resources and conservation required. (1) Before any such district shall be established, there shall be presented to the district court, at the hearing on the petition for such establishment, a written report or opinion from the department of natural resources and conservation on the engineering features involved and the possibilities of water supplies, accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in 85-7-104 and of all maps and other papers filed with the same shall be filed with the department at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the department in the investigation and report upon the proposed district shall be certified with the report and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment, and in event such petition be denied, then such costs shall be paid by the petitioners. The department shall, within a period of 120 days from the filing of said petition with the department, render its report, as herein provided, to the district court.

(2) Such report or opinion shall not be requested or obtained and shall not be necessary whenever it is proposed to cooperate with the United States under the federal reclamation laws heretofore or hereafter enacted or under any act of congress which shall permit of the performance by the United States of work in this state for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(3).

85-7-104. Petition for organization. (1) For the purpose of establishing and organizing an irrigation district hereunder, a petition signed by the required number of holders of title or evidence of title to lands within the proposed district mentioned in 85-7-101 shall be filed with the clerk of the district court of the county in which the greatest portion of the lands of the proposed district is located. The petition shall set forth:

(a) the name suggested for the proposed district;

(b) a general description of the lands to be included in the proposed district;

(c) the names of the holders of title or evidence of title to the lands in the proposed district, ascertained in the manner mentioned in 85-7-101 and 85-7-102, and if a holder is a nonresident of the county or counties in which the proposed district lies, the post-office address of the nonresident owner, if known;

(d) generally, the source from which the lands in the proposed district are to be irrigated and the character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in the proposed district;

(e) a prayer that the lands embraced within the proposed district be organized as an irrigation district according to the applicable provisions of this chapter.

(2) The petition shall be accompanied by:

(a) a map or plat of the proposed district; and

(b) a good and sufficient bond or undertaking, to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions of subsection (1), to pay all costs in and about the proceedings preliminary to the organization of the district in the event that the organization is not effected.

(3) Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands does not render invalid any proceedings hereunder or deprive the district court of jurisdiction of the subject matter. Such misdescribed lands or misnamed persons may not be included in the district.

History: En. Sec. 2, Ch. 146, L. 1909; re-en. Sec. 7167, R.C.M. 1921; re-en. Sec. 7167, R.C.M. 1935; amd. Sec. 14, Ch. 460, L. 1977; R.C.M. 1947, 89-1202.

85-7-105. Order and notice of hearing on petition. (1) On such petition being filed, the district court or judge thereof shall make an order fixing the time and place of hearing on the petition and directing that notice thereof be given. Thereupon the clerk of said court shall cause to be published at least once a week for 2 successive calendar weeks in some newspaper published in the county where the petition is filed a copy of such petition, together with a notice stating the time and place fixed by the district court when and where the hearing on said petition will be had. If any portion of the lands within the proposed district lies within any other county or counties, then said petition and notice shall be published as above provided in a newspaper published in each such other county. If there be no newspaper published in such county, said petition and notice may be published in an adjoining county.

(2) The first publication of said petition and notice shall be not less than 30 days prior to the time mentioned in said notice for said hearing.

(3) If any holder of title or evidence of title to lands within the proposed district is a nonresident of the county or counties in which the proposed district lies, the clerk of said court shall, within 3 days after the first publication aforesaid, mail a copy of said petition and notice to each such nonresident whose post-office address is stated in said petition.

(4) The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts.

History: En. Sec. 3, Ch. 146, L. 1909; re-en. Sec. 7168, R.C.M. 1921; re-en. Sec. 7168, R.C.M. 1935; R.C.M. 1947, 89-1203.

85-7-106. Hearing on petition. (1) At the time specified in the notice mentioned in 85-7-105, the district court in which the petition is filed shall hear the petition but may adjourn such hearing from time to time, not exceeding 3 weeks in all, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any interested person or persons, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing all interested persons whose lands or rights may be damaged or benefited by the organization of the district or by the irrigation works or improvements therein or to be acquired or constructed may appear and contest the necessity or utility of the proposed district or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto.

(2) The court shall hear and determine whether the requirements of 85-7-101 through 85-7-105 have been complied with and for that purpose shall hear all competent and relevant testimony that may be offered.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(1), (2).

85-7-107. Court decision — appointment of commissioners. (1) (a) The court may make such changes in the proposed district as may be considered advisable or as fact, right, and justice may require. Land which is susceptible of irrigation from the same general source and by the same general system of works applicable to the other lands of the proposed district may not be excluded from the proposed district if the owner or owners of the lands file in the district court a written request that the lands be included.

(b) Lands which will not, in the judgment of the court, be benefited by irrigation from the works of the proposed district; which are already under irrigation; which have appurtenant water rights; or which can be irrigated from sources more feasible than the proposed district may not be included in the district unless the owner of such lands consents in writing to the inclusion.

(c) Notwithstanding the provisions of subsection (1)(b), whenever a district is formed to cooperate with the United States, lands previously irrigated and having appurtenant water rights may be included within the district boundaries if it appears to the court that the lands will be benefited by inclusion.

(d) All lands having appurtenant water rights, served by an irrigation works system supplying more than 10,000 acres, may, in the discretion of the court, be included in the proposed district upon petition by at least a majority, both in number and acreage, of the holders of title or evidence of title to the lands served by the irrigation system and having appurtenant water rights.

(e) Lands of the district need not be contiguous. The location of a particular tract in the proposed district is not a bar to exclusion.

(2) For purposes of including or excluding land from a proposed district, the court may subdivide any tract into 40-acre or smaller parcels.

(3) If, on final hearing, it is found by the court that the petition does not substantially comply with the requirements of this part or that the facts stated are not sustained by the evidence, the court shall dismiss the petition at the cost of the petitioners and make and enter an order to that effect. If it is found that the petition substantially complies with the requirements and that the facts stated are sustained by the evidence, the court shall make and enter an order:

(a) setting forth findings and allowing the petition;

(b) establishing the proposed district;

(c) giving accurate descriptions of the lands included within the proposed district;

(d) dividing the proposed district into three, five, or seven divisions, as may be advisable in view of the size of the district;

(e) appointing as commissioner one competent person for each division of the district having the qualifications as provided by 85-7-1501.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(3) thru (5).

85-7-108. Effect of court findings and order. The finding and order are conclusive upon all the owners of lands within the district that they have assented to and accepted the applicable provisions of this chapter and are final unless appealed from to the supreme court within 60 days from the day of entry of the order. A copy of the order, duly certified to by the clerk of the district court, shall be filed for record within 30 days after the order is made and entered with the county clerk and recorder of the county where the lands included within the district are situated. Lands not situated in the county in which the copy is filed shall be omitted from the copy.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(6).

85-7-109. Irrigation district as public corporation. Every irrigation district so established is a public corporation for the promotion of the public welfare, and the lands included therein shall constitute all the taxable and assessable property of such district for the purposes of this chapter.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(7).

85-7-110. Districts organized under earlier laws. Any irrigation district organized under the provisions of Chapter 70, Laws of 1907, and Chapter 16, Laws of 1909, shall be governed by the applicable provisions of this chapter. Whenever any irrigation district shall have already been organized under the provisions of said session laws and shall have issued bonds or entered into any contract of purchase or construction, nothing contained in this chapter shall be construed as affecting the rights of the holders of said bonds or of any person, persons, corporation, or association party or parties to any such contract with said district, under or by virtue of any of the provisions of said session laws. If a majority of the holders of title or evidence of title to lands included in the district heretofore organized under the provisions of said session laws (said holders of title or evidence of title, also representing a majority in acreage of irrigable lands of said district) shall petition under the provisions of this part for the organization of a new district, including not less than four-fifths of the irrigable lands embraced within such districts so organized, and shall pray for an order disorganizing such district and vacating all proceedings therein, the court shall have jurisdiction to proceed under this part and part 15 to organize such new district and, in making its final order creating such new district, shall also make an order vacating and disorganizing the old district. All money or property belonging to such old district shall be and become the money and property of such new district. Should any lands included in the old district not be included in the new district, the commissioners of the latter shall pay to the owner or owners of such land their just proportion thereof, on the basis of the last assessment made.

History: En. Sec. 67, Ch. 146, L. 1909; re-en. Sec. 7263, R.C.M. 1921; re-en. Sec. 7263, R.C.M. 1935; R.C.M. 1947, 89-2110(part).

Part 2

Creation of Districts — Adjudicated Streams

85-7-201. Creation of districts by owners of water of adjudicated streams. It is the purpose and intention of this part, in the furtherance of public welfare, to provide an effective public agency for the improvement, development, and maintenance of certain existing irrigation systems in cases where administration thereof, through the agency of a water commissioner and the existing statutes, is not effective.

History: En. Sec. 1, Ch. 117, L. 1933; re-en. Sec. 7187.4, R.C.M. 1935; R.C.M. 1947, 89-1318.

85-7-202. Application of part. This part shall apply only when 20 or more owners of land with water rights appurtenant thereto are being served by one stream and its branches or from one source of water supply and in which the rights to the use of water shall have been determined by decree of a court of competent jurisdiction and at least 2,000 acres of land, contiguous in location or of reasonably compact area, are being served by the single stream or source.

History: En. Sec. 2, Ch. 117, L. 1933; re-en. Sec. 7187.5, R.C.M. 1935; amd. Sec. 20, Ch. 460, L. 1977; R.C.M. 1947, 89-1319.

85-7-203. Petition, hearing, and order. Whenever the owners of land and water rights, as described in 85-7-202, desire to organize for the purposes mentioned in this part, a petition to that effect, signed by not less than 60% of the individual landowners who represent not less than 51% of the irrigable acres to be affected by the proposed district and 51% of the cubic feet of water per second decreed or adjudicated in the stream from which the irrigation district is to operate, shall be filed with the clerk of the district court of the county or counties in which the district is to be created. For the purpose of determining whether the requirements of acreage and cubic feet of water per second have been met by the petition, water diverted from the adjudicated stream and distributed under irrigation districts other than the one to be created under this part may not be considered; however, such water and acreage shall be required to pay all assessments the same as other water and acreage affected by irrigation districts created under this part. Upon filing of the petition, the court shall set a date for a hearing on the petition and a written notice shall be mailed, not less than 5 days prior to the hearing, to each landowner or water right owner affected by the proposed district. If the court finds from such hearing that an irrigation district, as prayed for in the petition, is feasible and practical, the court shall issue an order creating the irrigation district. The order shall constitute the authority for the district to function for the purposes and intent as outlined in this part. The court shall appoint five commissioners who are landowners or water right owners affected by such district to act until the first annual meeting.

History: En. Sec. 3, Ch. 117, L. 1933; re-en. Sec. 7187.6, R.C.M. 1935; amd. Sec. 21, Ch. 460, L. 1977; R.C.M. 1947, 89-1320.

85-7-204. Election of board of trustees. On the first Monday in March of each year after the creation of the district, a meeting of the water right owners of such district shall be called, time and place for such meeting to be published in at least two issues of the local paper prior to such meeting, and at such meeting a board of trustees of five members to serve for 1 year shall be elected by ballot.

History: En. Sec. 4, Ch. 117, L. 1933; re-en. Sec. 7187.7, R.C.M. 1935; R.C.M. 1947, 89-1321.

85-7-205. Duty of trustees, levy, and indebtedness. The board of trustees may develop the source of supply; clean, improve, and develop the channel of the stream; and do and perform other work on the main distributing system as will be beneficial to the better distribution of the waters of the decreed water right stream, but in no case may the board, to cover the expenses of such work, levy to exceed 25 cents per acre in any one year. Whenever waters of the stream under the irrigation district created by this part are commingled with other waters or it is difficult to determine how many acres are irrigable by the water rights held in the stream, the acre basis of levy shall be determined by the number of cubic feet of water per second owned by such party or parties at the rate of .025 cubic feet of water per second to the acre. The board may not issue bonds or incur any indebtedness other than warrant indebtedness under the limitations imposed by law.

History: En. Sec. 5, Ch. 117, L. 1933; re-en. Sec. 7187.8, R.C.M. 1935; amd. Sec. 22, Ch. 460, L. 1977; R.C.M. 1947, 89-1322.

85-7-206. Basis and apportionment of annual tax. The annual tax levy and the apportionment and distribution of the total amount required to be raised in any year shall be had and done in accordance with the provisions and limitations of law applicable to irrigation districts organized under the provisions of parts 1 and 15 of this chapter.

History: En. Sec. 6, Ch. 117, L. 1933; re-en. Sec. 7187.9, R.C.M. 1935; R.C.M. 1947, 89-1323.

85-7-207. Part not to conflict with other regulations. This part is not intended to conflict in any way with present statutes governing the appointment and duties of water commissioners on adjudicated water right streams or the operation of statutes as to the jurisdiction of courts over such commissioners and water rights and distribution of water under court decree but is for the sole purpose of making it possible for users of water out of decreed water right streams to improve the stream channel and conserve water in the best possible manner through the agency of an irrigation district, as provided for in this part.

History: En. Sec. 7, Ch. 117, L. 1933; re-en. Sec. 7187.10, R.C.M. 1935; R.C.M. 1947, 89-1324.

85-7-208. Dissolution of district. A district created under this part may be dissolved by court order upon proper hearing and in the same manner as this part provides for its creation.

History: En. Sec. 8, Ch. 117, L. 1933; re-en. Sec. 7187.11, R.C.M. 1935; R.C.M. 1947, 89-1325.

Part 3

Creation of Districts
Common Water Supply

85-7-301. Creation of district by owners of rights in common water supply. (1) It is a purpose and intention of this part, in the furtherance of the public welfare, to provide an effective public agency for the improvement, development, operation, maintenance, and administration of certain existing irrigation systems in cases where administration thereof through the agency of a water commissioner is not effective.

(2) It is a purpose and intention of this part to extend to irrigation districts organized hereunder the powers, duties, and status of the public corporations organized under the irrigation district laws of the state of Montana, as the same may now or hereafter exist; provided, that neither such districts nor the board of commissioners thereof shall have any power or authority to issue bonds or incur indebtedness, other than warrant indebtedness, under the limitations proposed by law. This part does not contemplate the acquisition by the district of the existing water, water rights, or system or works owned by the respective water right owners within the district.

History: En. Secs. 1, 8, Ch. 100, L. 1925; re-en. Secs. 7264.1, 7264.8, R.C.M. 1935; R.C.M. 1947, 89-2111, 89-2118.

85-7-302. Application of part. This part shall apply only when more than 15 owners of land, with water rights appurtenant thereto, shall have diverted water by means of a single intake from the source of supply and shall have provided a single canal for conveying such water to the branches and laterals of an established irrigation system, serving at least 1,000 acres of land contiguous in location or of reasonably compact area and in which the rights to the use of the water shall have been determined by decree of a court of competent jurisdiction.

History: En. Sec. 2, Ch. 100, L. 1925; re-en. Sec. 7264.2, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1943; R.C.M. 1947, 89-2112.

85-7-303. Establishment of district. Whenever the owners of land and water rights, situated as described in 85-7-302, desire to organize for the purposes mentioned in this part, such owners may propose the establishment and organization of an irrigation district under the provisions of this chapter, except part 2, insofar as such laws are applicable hereto and not in conflict with the purposes and provisions of this part.

History: En. Sec. 3, Ch. 100, L. 1925; re-en. Sec. 7264.3, R.C.M. 1935; R.C.M. 1947, 89-2113.

85-7-304. Sections not applicable. The provisions of 85-7-1911(1) and (2), 85-7-1934, 85-7-1935, 85-7-1941 through 85-7-1943, 85-7-2001, 85-7-2011 through 85-7-2027, 85-7-2031, 85-7-2032, and 85-7-2141 shall have no application to the organization of irrigation districts under this part.

History: En. Sec. 4, Ch. 100, L. 1925; re-en. Sec. 7264.4, R.C.M. 1935; R.C.M. 1947, 89-2114.

85-7-305. Apportionment of water by commissioners. The board of commissioners shall apportion the water for irrigation among the lands of the district in a just and equitable manner and in compliance with the decree adjudicating the rights thereto, but the maximum amount apportioned to any land shall be the amount that can be beneficially used thereon.

History: En. Sec. 5, Ch. 100, L. 1925; re-en. Sec. 7264.5, R.C.M. 1935; R.C.M. 1947, 89-2115.

85-7-306. Development of water supply — limit on levy for expenses. The board of commissioners of such irrigation district shall have authority to develop the source of supply and increase the means of distribution of water to the end that all owners of water rights under said system shall receive the amount of water which can be beneficially used upon their lands within the district. Not more than $4 per acre shall be levied against each irrigable acre of land in the district in any one year on account of administrative expenses, cost of maintenance and repairs, development of water supply, or enlargement of distribution facilities.

History: En. Sec. 6, Ch. 100, L. 1925; re-en. Sec. 7264.6, R.C.M. 1935; R.C.M. 1947, 89-2116.

85-7-307. Tax levy. The annual tax levy and the apportionment and distribution of the total amount required to be raised in any year shall be had and done in accordance with the provisions and limitations of law applicable to other irrigation districts organized under parts 1 and 15 of this chapter.

History: En. Sec. 7, Ch. 100, L. 1925; re-en. Sec. 7264.7, R.C.M. 1935; R.C.M. 1947, 89-2117.

85-7-308. Validity of districts organized earlier. Any irrigation district which has been heretofore organized under procedure in substantial compliance with the provisions of this part shall, upon March 10, 1925, become a public corporation, with the privileges and powers hereby conferred, to the same extent as if such irrigation district were organized under the authority of this part.

History: En. Sec. 9, Ch. 100, L. 1925; re-en. Sec. 7264.9, R.C.M. 1935; R.C.M. 1947, 89-2119.

Parts 4 through 9 reserved

Part 10

Dissolution of Districts

85-7-1001. Proceedings for dissolution of district. (1) Whenever an irrigation district has been organized under the provisions of parts 1 and 15, then such district may be dissolved by an order of the district court of the county in which the lands or the greater portion of the lands are situate whenever:

(a) no irrigation plant or system for the irrigation of the lands in the district has been constructed or purchased;

(b) no bonded indebtedness has been incurred; and

(c) all expenses for the organization and all other indebtedness of the district have been paid.

(2) In order that the district court may acquire jurisdiction to enter such order dissolving the district, a petition must be filed with the clerk of said district court, signed by an equal number of holders of title or evidence of

title as are required to sign the original petition for the creation of the district. The district court must make an order for the hearing of said petition within 30 days from its filing, and the clerk of the court must give due notice of the hearing of such petition by posting three notices in three public places in said district and by publication of a notice of the hearing for 2 successive weeks in a newspaper of general circulation published in the county. Upon the hearing of said petition, any person interested may appear and give evidence for or against the granting of said petition. If, upon said hearing, the court finds that no bonded indebtedness of the district has been created and all of the expenses of organization and all other indebtedness have been paid and that the best interests of the landowners of said district require that the district shall be dissolved, the district court shall make such order dissolving said district and shall cause a certified copy of the order to be recorded in the office of the county clerk and recorder of said county.

History: En. Sec. 3, Ch. 96, L. 1919; re-en. Sec. 7253, R.C.M. 1921; re-en. Sec. 7253, R.C.M. 1935; R.C.M. 1947, 89-2001.

85-7-1002. Dissolution of districts having incurred indebtedness. (1) Any irrigation district organized and existing under the laws of the state of Montana may be dissolved by an order of the district court of the county in which the land or the greater portion of the lands of the district are situated.

(2) In case a district has incurred bonded indebtedness and has constructed or purchased any irrigation plant or system for the irrigation of the land in the district, it shall be necessary, in order that the district court may acquire jurisdiction to enter an order dissolving the district, that a petition be filed with the clerk of said district court. This petition shall be signed by an equal number of holders of title or evidence of title as are required to sign the original petition for the creation of the district and must also be signed by a sufficient number of bondholders of the district or by their assignees or duly authorized agents, representing at least 80% of the outstanding bonds of said district.

(3) In case a district has incurred bonded indebtedness but has not constructed or purchased any irrigation plant or system for the irrigation of land in the district and more than 10 years have expired since the date of organization of the district, then in such case, such district may be dissolved by an order of the district court of the county in which the land or the greater part of the lands are situated if the petition praying for dissolution shall be signed by a majority of the board of irrigation district commissioners and also by a sufficient number of bondholders of the district or by their assignees or duly authorized agents, representing at least 80% of the outstanding bonds of said district.

History: En. Sec. 1, Ch. 60, L. 1933; re-en. Sec. 7253.1, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1943; R.C.M. 1947, 89-2002.

85-7-1003. Contents of petition. The petition of 85-7-1002 shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if any, together with the general description of them, showing the amount of each described indebtedness and the ownership, so far as known, of the indebtedness. The petition shall also state the assets of the district, including any irrigation systems, dams, reservoirs, canals, franchises, water rights, and other property; and in case any proposition has been made by the holders of the indebtedness to settle the indebtedness, this proposition, together with any plan proposed to carry the proposition into execution, shall be included in the petition.

History: En. Sec. 2, Ch. 60, L. 1933; re-en. Sec. 7253.2, R.C.M. 1935; amd. Sec. 37, Ch. 460, L. 1977; R.C.M. 1947, 89-2003.

85-7-1004. Use of corporation to carry out dissolution plan. In carrying out such plan and proposition, a corporation may be organized under the general laws for the purpose of acquiring the assets of said district, including the irrigation system, if any, dams, reservoirs, canals, franchises, water rights, and other property, which corporation shall have all the powers, rights, and franchises of corporate bodies organized under general laws and in addition shall have such further power as may be necessary to possess and carry on said irrigation system and exercise such franchise and water rights.

History: En. Sec. 3, Ch. 60, L. 1933; re-en. Sec. 7253.3, R.C.M. 1935; R.C.M. 1947, 89-2004.

85-7-1005. Hearing on petition, notice, and order. The district court must make an order for the hearing of the petition for the dissolution of the district within 30 days from its filing, and the clerk of the court must give due notice of the hearing of said petition by posting three notices in three public places in said district and by publication of a notice of the hearing for 2 successive weeks in a newspaper of general circulation published in the county and by mailing notice of said hearing to all known bondholders of the district. Upon the hearing of said petition, any person interested may appear and give evidence for or against the granting of said petition.

History: En. Sec. 4, Ch. 60, L. 1933; re-en. Sec. 7253.4, R.C.M. 1935; R.C.M. 1947, 89-2005.

85-7-1006. Court's authority at hearing. (1) At the hearing by said court it shall determine the regularity, legality, and correctness of all proceedings and in so doing shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties. The rules of pleading and practice in Title 25 not inconsistent with the provisions of this part are made applicable to the proceedings herein provided. The proceedings herein are declared to be for the general interest of the public and state. The hearing upon said petition shall be considered as an equitable action in rem.

(2) If the court shall consider, after hearing, that the plan proposed in the petition is not in the public interest and will not promote public welfare or is unfair to bondholders or property holders or general creditors, it may allow the petitioners to amend their petition and to submit a modified or different plan and hear the amended petition and hear and dispose of objections to the same. The judgment may dissolve the district as a public corporation; transfer water rights appurtenant to lands, whether represented by shares of stock or otherwise; and divest the lien of bonds upon lands in the district.

History: En. Sec. 5, Ch. 60, L. 1933; re-en. Sec. 7253.5, R.C.M. 1935; R.C.M. 1947, 89-2006.

85-7-1007. Court decree and sale of assets. (1) The court, in its decree, shall have the power to make the orders necessary to carry out said proposition for the discharge of the indebtedness and distribution of the property of said district and may decree a sale of its assets in such manner as may effectuate said proposition and as the court may judge best, either in one lot or in such parcels as may be provided and may provide for conveyance of said irrigation system, including dams, reservoirs, canals, franchises, water rights, and other property and also of any other assets of the district, including lands sold thereto.

(2) The court, in its investigation and determination of said matter, may take into consideration the fact that payments have been made by certain of the water users in excess of other water users who have defaulted. In its decree the court may require that the purchaser of the assets may give consideration to various water users for payments theretofore made by them on the irrigation system.

History: En. Sec. 6, Ch. 60, L. 1933; re-en. Sec. 7253.6, R.C.M. 1935; R.C.M. 1947, 89-2007.

85-7-1008. Final decree of dissolution — when made. Whenever all the property of such irrigation district shall have been disposed of and all the obligations thereof, if any there be, shall have been discharged, the court shall enter a final decree declaring said district to be dissolved.

History: En. Sec. 7, Ch. 60, L. 1933; re-en. Sec. 7253.7, R.C.M. 1935; R.C.M. 1947, 89-2008.

Parts 11 through 14 reserved

Part 15

Organization of Districts

85-7-1501. Qualifications of commissioners and term of office. (1) No person may be a commissioner unless he is an owner of land within the district and is a resident of the county in which the division of the district or some portion thereof, for which the commissioner is elected, is situated.

(2) The commissioners appointed shall hold their respective offices until the second Saturday in December following their appointment and until their respective successors are elected and qualified. Each of the commissioners shall qualify in the same manner as justices of the peace. The bond for a commissioner shall be approved by the district court or judge thereof and filed in the office of the clerk of the court.

History: En. Sec. 5, Ch. 146, L. 1909; amd. Sec. 1, Ch. 145, L. 1915; re-en. Sec. 7170, R.C.M. 1921; re-en. Sec. 7170, R.C.M. 1935; amd. Sec. 16, Ch. 460, L. 1977; R.C.M. 1947, 89-1205(part); amd. Sec. 398, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

85-7-1502. Organization of board of commissioners and establishment of office. (1) The commissioners shall meet within 10 days after their appointment and shall organize as a board by the election of one of their number as president. They shall also elect a secretary (who may or may not be a commissioner). Except as provided in part 16 of this chapter, the compensation of the secretary and all other employees authorized under this chapter shall be fixed by the board.

(2) The board shall also at this meeting designate the place where the office of the board shall be established and maintained and its records kept, which place shall be in the county containing a substantial portion of the lands in the district; and such place shall not be changed except by resolution of the board, of which notice shall be given by at least one publication in some newspaper published or of general circulation in the county wherein the office of the district is located and by posting in at least three public places in each division of the district.

History: En. Sec. 6, Ch. 146, L. 1909; re-en. Sec. 7171, R.C.M. 1921; amd. Sec. 2, Ch. 157, L. 1923; re-en. Sec. 7171, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1961; R.C.M. 1947, 89-1206.

85-7-1503. Board meetings. (1) All meetings of the board of commissioners shall be public and a complete record of all proceedings shall be kept by the secretary.

(2) Regular meetings of the board shall be held at such times as the board may by rule or bylaw prescribe. Special meetings may be called on 24 hours' notice by the president or any two members of the board or in such other manner and upon such other notice as the board may by rule or bylaw prescribe. All meetings of the board may be adjourned as the board shall order or direct. A majority of the commissioners shall constitute a quorum.

History: En. Sec. 7, Ch. 146, L. 1909; re-en. Sec. 7172, R.C.M. 1921; re-en. Sec. 7172, R.C.M. 1935; R.C.M. 1947, 89-1207.

85-7-1504. Bonds for commissioner and secretary. (1) In all cases where the obligations of the district, either existing or proposed, total $250,000 or over, the commissioners of an irrigation district shall each furnish a bond in the penal sum of $2,500, with corporate surety conditioned for the faithful performance of their duties under this chapter. The secretary shall furnish bond, with corporate surety, in the sum of $1,000, conditioned for the faithful performance of his duties pursuant to this chapter and for the proper safekeeping of the records and documents of the district. In all other cases the bond for the commissioners shall be in the sum of $1,000.

(2) In case any district established under this chapter is appointed fiscal agent of the United States or is authorized by the United States to make collections of moneys for and on behalf of the United States in connection with any federal reclamation project, each commissioner shall execute a further and additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization, and any such bond may be sued upon by the United States or by any person injured by the failure of the commissioner or the district to fully, promptly, and completely perform their respective duties.

History: (1)En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; Sec. 89-1208, R.C.M. 1947; (2)En. Sec. 5, Ch. 146, L. 1909; amd. Sec. 1, Ch. 145, L. 1915; re-en. Sec. 7170, R.C.M. 1921; re-en. Sec. 7170, R.C.M. 1935; amd. Sec. 16, Ch. 460, L. 1977; Sec. 89-1205, R.C.M. 1947; R.C.M. 1947, 89-1205(part), 89-1208(3).

85-7-1505. Compensation and expenses of commissioners. The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive an amount not to exceed $20 a day for services and, in addition thereto, their necessary expenses in attending meetings or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem are approved by a unanimous vote of the board, and a mileage allowance of 12 cents a mile in attending board meetings or when engaged in the business of the irrigation district.

History: En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; R.C.M. 1947, 89-1208(1).

85-7-1506. Liability of officers. For any willful violation of any express duty hereunder on the part of any officer herein named, he shall be liable upon his official bond and be subject to removal from office by proceedings brought by any tax or assessment payer of the district in the district court of the county wherein the office of the board of commissioners of the district is located.

History: En. Sec. 61, Ch. 146, L. 1909; re-en. Sec. 7256, R.C.M. 1921; re-en. Sec. 7256, R.C.M. 1935; R.C.M. 1947, 89-2103.

85-7-1507. Conflict of interest — criminal penalty. No commissioner or any other officer named in this chapter may in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board or in the profits derived therefrom. For any violation of this provision, such officer is guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished as provided in 45-7-401.

History: En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; R.C.M. 1947, 89-1208(2); amd. Sec. 2, Ch. 326, L. 1979.

85-7-1508. Compensation and duties of secretary. The member of the board acting as secretary or any person appointed by the board as secretary for the district shall receive such compensation for his services as may be allowed by the board. It shall be the duty of the secretary to keep the books and records of accounts, contracts, securities, and other records; to perform his duties promptly each month; and to make a monthly reconcilement of his accounts with the county treasurer. It shall be the duty of the county treasurer to make a monthly report to the secretary of all receipts, disbursements, and balances. A failure by the secretary to comply with the provisions of this section shall cause a forfeiture of his salary, and he shall be removed from office by the board.

History: En. Sec. 2, Ch. 212, L. 1921; re-en. Sec. 7261, R.C.M. 1921; re-en. Sec. 7261, R.C.M. 1935; R.C.M. 1947, 89-2108.

Part 16

Joint Operations

85-7-1601. Authority for joint operation of districts. Whenever the board of commissioners of one or more irrigation districts, established and organized by virtue of the provisions of 85-7-101 through 85-7-103 shall, in their discretion, deem it advisable for the best interests of their district to operate, manage, supervise, and maintain the operation of their district jointly with another irrigation district, the said commissioners are hereby authorized and empowered to enter into written contracts for the creation of a joint board of control. Where irrigation works lie partly in the state of Montana and partly in an adjacent state, the board of commissioners may contract with the district or districts in the adjacent state for the creation of a joint board of control.

History: **En. Sec. 1, Ch. 179, L. 1959; R.C.M. 1947, 89-1209.**

85-7-1602. Election on joint operations. At any time after March 7, 1959, in the event that it is deemed advisable or desirable for any irrigation districts to operate under the direction of a board of control as herein provided, the boards of commissioners of the districts, after petition requesting the same be received and filed with them, must call an election to put the question before the landowners of the districts which are petitioned to be joined. In the event a majority of the landowners of each district, as provided by 85-7-1710, vote for organizing such board of control, then the commissioners of each district will be authorized and directed to enter into such contract to operate the districts in accordance with the terms of this part as provided by 85-7-1601. The election herein provided shall be conducted in the same manner and the same persons shall be entitled to vote thereat as provided for elections of commissioners of irrigation districts, in accordance with 85-7-1702, 85-7-1710, and 85-7-1712.

History: **En. Sec. 10, Ch. 179, L. 1959; R.C.M. 1947, 89-1218(part); amd. Sec. 399, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

85-7-1603. Withdrawal from joint operation. Any district having entered into a written contract, as provided by this part, may withdraw from such contract upon submitting to the board of control, in writing, a 90-day notice of withdrawal.

History: **En. Sec. 11, Ch. 179, L. 1959; R.C.M. 1947, 89-1219.**

85-7-1604. Validity of joint operations under earlier agreements. Any contract previously entered into between any two or more irrigation districts or between any such irrigation districts and the United States bureau of reclamation which meets the requirements of this part and which creates a board of control meeting all the requirements of this part is hereby declared to be a valid contract and to create a valid board of control under this part.

History: **En. Sec. 10, Ch. 179, L. 1959; R.C.M. 1947, 89-1218(part).**

85-7-1605. Purpose. This part is not intended to conflict in any way with statutes governing irrigation districts but is for the sole purpose of making it possible for one or more irrigation districts to function jointly through a central control agency for the purpose of efficiency, simplicity, and economy.

History: En. Sec. 12, Ch. 179, L. 1959; amd. Sec. 18, Ch. 460, L. 1977; R.C.M. 1947, 89-1220.

85-7-1606 through 85-7-1610 reserved.

85-7-1611. Board of control — composition and vacancies. (1) The board of control shall be composed of one or more irrigation commissioners from each district involved, who shall be appointed by the board of commissioners of the district which he or they represent for a term of 1 year, and one member at large. The member at large shall be a landowner from one of the districts involved and shall be appointed by the commissioner members to serve for a period of 1 year and shall be required to give bond, the same as an irrigation district commissioner. The member at large shall not be an employee, agent, water commissioner, or servant of any of the districts involved. At no time shall the board membership be less than three members. Each member of the board of control and the manager, if hired, before entering upon his duties shall give a bond to the board of control in the amount of $5,000, conditioned upon the faithful performance of his duties.

(2) Vacancies occurring during the term in the position of commissioner member shall be filled for the remainder of the unexpired term by appointment of the board of commissioners of the district involved. Vacancies occurring in the position of member at large shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

History: En. Sec. 2, Ch. 179, L. 1959; R.C.M. 1947, 89-1210.

85-7-1612. Board of control — powers and duties. (1) The board of control established under and by virtue of this part shall be the operating agent of the contracting districts for the operation and maintenance of irrigation and/or drainage works and the delivery of water therefrom.

(2) The board shall make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required; and prescribe their duties.

(3) The board shall have the authority and power to institute and maintain any and all actions and proceedings and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this part or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by its attorneys and in the name of such board of control.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of the board to pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the contracting districts and for the protection and preservation of the works and other property of the districts. All orders and resolutions shall be passed or adopted by a majority of the members of the board of control by a "yea" and "nay" vote, to be entered upon the records of the board.

(5) The board of control shall have power generally to do and perform all other acts as shall be necessary or appropriate to fully carry out the purposes of this part.

History: **En. Sec. 3, Ch. 179, L. 1959; R.C.M. 1947, 89-1211; amd. Sec. 3, Ch. 326, L. 1979.**

85-7-1613. Board of control — per diem and expenses. The members of the board of control, when sitting as a board, shall receive for services not to exceed $15 per day and, in addition thereto, their necessary expenses in attending meetings or when otherwise engaged in board of control business.

History: **En. Sec. 4, Ch. 179, L. 1959; R.C.M. 1947, 89-1212.**

85-7-1614. Board of control — office and records. The board of control is hereby authorized and empowered to establish an office in one of the contracting districts; to hold its proceedings therein; and to keep on file all necessary petitions, papers, minutes, documents, or other instruments belonging to the board of control and the contracting districts.

History: **En. Sec. 5, Ch. 179, L. 1959; R.C.M. 1947, 89-1213.**

85-7-1615. Manager of operations. The board of control shall have the power to hire a manager to supervise and conduct the operations of the district or districts over which it presides or to hire a manager for each district under its supervision, whichever it deems advisable in the premises. The manager or managers shall perform all duties as set out for him or them by the board of control.

History: **En. Sec. 6, Ch. 179, L. 1959; R.C.M. 1947, 89-1214.**

85-7-1616. Required records. (1) It shall be the duty of the board of control to keep or cause to be kept, in the form prescribed by the department of community affairs, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts.

(2) It is hereby made the duty of the department of community affairs to prescribe such forms for the use of the board of control and to examine the same as provided by law for the examination of the affairs of county offices.

History: **En. Sec. 7, Ch. 179, L. 1959; amd. Sec. 165, Ch. 253, L. 1974; amd. Sec. 51, Ch. 213, L. 1975; R.C.M. 1947, 89-1215.**

85-7-1617. Apportionment of costs of joint operation. The districts entering into a contract for their joint control shall pay to the board of control, proportionately on an acreage basis the necessary costs, expenses, and charges for the general administration, maintenance, and repairs.

History: **En. Sec. 8, Ch. 179, L. 1959; R.C.M. 1947, 89-1216.**

85-7-1618. Custody and disbursement of funds. The county treasurer of the county wherein the office of the board is established shall be the custodian of all funds made available for the use of the board, and he shall pay out such funds upon the order of the board. Such orders shall be signed by the secretary or treasurer of the board of control and countersigned by the president or, in his absence, by the vice-president of the board of control. The board funds shall be kept separate and distinct from all other county funds. The county treasurer to whom board funds are entrusted shall be liable on his bond for the safekeeping of said funds.

History: **En. Sec. 9, Ch. 179, L. 1959; R.C.M. 1947, 89-1217.**

Part 17

Elections

85-7-1701. Repealed. Sec. 407, Ch. 571, L. 1979.

85-7-1702. Regular election — term of office. The regular election for commissioners in each district shall be held annually in accordance with 13-1-104, and within 40 days following their election the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office during the pleasure of the board. The term of office of each commissioner shall begin on the date of the organizational meeting after the regular election and shall continue for 3 years and until the election and qualification of his successor. Commissioners are elected by the electors of the entire district.

History: **En. Sec. 11, Ch. 146, L. 1909; amd. Sec. 4, Ch. 153, L. 1917; amd. Sec. 1, Ch. 3, L. 1921; amd. Sec. 1, Ch. 7, Ex. L. 1921; re-en. Sec. 7176, R.C.M. 1921; re-en. Sec. 7176, R.C.M. 1935; amd. Sec. 1, Ch. 302, L. 1977; R.C.M. 1947, 89-1303(part); amd. Sec. 370, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

85-7-1703. Vacancies among commissioners. In case of a vacancy in the board of commissioners, from any cause, such vacancy shall be filled for the remainder of the term by appointment by the judge of the district court of the county in which the division or major portion thereof is situated. The appointee shall be an owner of land within the district, shall be a resident of the county in which the division of the district (or some portion of the division for which such commissioner is so elected) is situated, and shall hold office until his successor is elected and qualified.

History: **En. Sec. 12, Ch. 146, L. 1909; re-en. Sec. 7177, R.C.M. 1921; amd. Sec. 5, Ch. 157, L. 1923; re-en. Sec. 7177, R.C.M. 1935; R.C.M. 1947, 89-1304.**

85-7-1704 through 85-7-1709. Repealed. Sec. 407, Ch. 571, L. 1979.

85-7-1710. Qualification of electors and nature of voting rights. (1) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to lands within the district, herein designated electors, are entitled to vote:

(a) all individuals having the qualifications of electors under the constitution and general and school laws of the state;

(b) guardians, executors, administrators, and trustees residing in the state;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this part, each elector is permitted to cast one vote for each 40 acres of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as hereinafter provided for), election precincts, or district divisions, but any elector owning any less than 40 acres of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district shall be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners, and one vote only for each 40 acres of irrigable land or major fraction thereof may be cast by the voting co-owner or agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation or co-owners, the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of his authority, executed and acknowledged by the proper officers of the corporation, by the co-owners, or by the owner of land under contract of sale, as the case may be, and thereupon the agent or co-owner or purchaser, as the case may be, is an elector within the meaning of this part. Whenever the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district, each elector is permitted to cast one vote for each acre of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote. The balloting shall take place in the following manner: 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10. The election shall otherwise conform with the provisions of Title 13.

History: En. Sec. 19, Ch. 146, L. 1909; re-en. Sec. 7184, R.C.M. 1921; amd. Sec. 6, Ch. 157, L. 1923; re-en. Sec. 7184, R.C.M. 1935; amd. Sec. 1, Ch. 164, L. 1953; amd. Sec. 19, Ch. 460, L. 1977; R.C.M. 1947, 89-1311; amd. Sec. 371, Ch. 571, L. 1979.

85-7-1711. Repealed. Sec. 407, Ch. 571, L. 1979.

85-7-1712. Special elections. The board of commissioners may at any time call a special election and submit to the qualified electors of the district any question which under the provisions of this chapter is required or which, in the judgment of the board, is proper to be submitted to popular vote. Such election shall be called, noticed, and conducted and the result thereof determined and declared in the manner provided in Title 13.

History: En. Sec. 21, Ch. 146, L. 1909; re-en. Sec. 7186, R.C.M. 1921; re-en. Sec. 7186, R.C.M. 1935; R.C.M. 1947, 89-1313; amd. Sec. 372, Ch. 571, L. 1979.

85-7-1713. Where documents to be filed and proceedings to be held. Where the lands of a district lie within more than one county, all petitions, papers, documents, or other instruments shall be filed and proceedings had in the county containing the greater portion of said district.

History: En. Sec. 22, Ch. 146, L. 1909; re-en. Sec. 7187, R.C.M. 1921; re-en. Sec. 7187, R.C.M. 1935; R.C.M. 1947, 89-1314.

Part 18

Alteration and Determination of District Acreage

85-7-1801. Change in boundaries. The boundaries of any irrigation district organized hereunder may be changed in the manner herein prescribed. Such change of the boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

85-7-1802. Elimination of lands from district. Whenever lands have been included within the boundaries of an established and organized irrigation district, which from their location or conformation cannot be successfully irrigated by the irrigation works or system already constructed or proposed to be constructed or the cost of irrigating the same will become burdensome upon the landowners of the district, a majority in number of the holders of title or evidence of title to the land included in such district (such holders of title or evidence of title also representing a majority in acreage of said lands) may petition the district court of the county in which the lands of the district or the greater portion thereof are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

85-7-1803. Requirements for petition to eliminate lands. (1) The petition for this purpose must be signed by the required number of holders of title or evidence of title to lands within such district, as hereinbefore specified, and the same shall be filed with the clerk of the district court as herein designated.

(2) Such petition shall set forth:

(a) the name of the district;

(b) a general description of the lands to be eliminated or excluded from the district;

(c) the names of the holders of title or evidence of title to the lands sought to be excluded; the names of the holders of title or evidence of title to the remainder of the lands of said district, ascertained in the manner mentioned in 85-7-101 and 85-7-102; and if any holder of title is a nonresident of the county or counties in which the district lies, the post-office address of such nonresident owners, if known;

(d) a brief description of the character of the works, water rights, canals, and other property acquired or proposed to be acquired or constructed for irrigation purposes in the district;

(e) a brief statement of the reasons why the lands sought to be excluded should be eliminated from the district;

(f) a prayer for the exclusion of the lands sought to be eliminated therefrom.

(3) The petition shall be accompanied by a map or plat of the district, showing thereon the lands sought to be eliminated therefrom, and a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions hereof, to pay all costs in and about the proceedings and the hearing thereof in the event that said petition is denied.

History: **En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).**

85-7-1804. Minor errors. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of jurisdiction of the subject matter.

History: **En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).**

85-7-1805. Notice requirements. On such petition being filed, the district court or judge thereof shall make an order fixing the time and place of hearing on the petition and directing that notice thereof be given. Thereupon the clerk of said court shall cause to be published at least once a week for 2 successive calendar weeks, in some newspaper published in the county where the petition is filed, a notice stating the time and place fixed by the district court when and where the hearing on said petition will be had and containing a brief statement of the matters set forth in said petition and the object thereof. If any portion of the lands sought to be excluded from the district lie within any other county or counties, then said notice shall be published as provided above in a newspaper published in each such other county. The first publication of said notice shall be not less than 30 days prior to the time mentioned in said notice for said hearing. If any holder of title or evidence of title to lands sought to be excluded from the district is a nonresident of the county or counties in which the district lies, the clerk of said court shall, within 3 days after the first publication aforesaid, mail a copy of said notice to each such nonresident whose post-office address is stated in said petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said notice affixed to a copy thereof shall be sufficient evidence of such facts.

History: **En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).**

85-7-1806. Court hearing on petition to eliminate lands. (1) At the time specified in the notice, the district court in which the petition is filed shall hear the petition but may adjourn such meeting from time to time, not exceeding 2 weeks in all, and may continue the hearing for the want of sufficient notice or other good cause. The court upon application of the petitioners shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested whose lands or rights may be damaged or benefited by the granting of the petition or the exclusion of the lands from the district may appear and contest the necessity or justice of the court's making an order granting such petition in whole or in part, and the contestants and petitioners may offer any competent evidence in regard thereto.

(2) It shall be the duty of the court to hear and determine whether the requirements as herein set forth have been complied with, and for that purpose shall hear all competent and relevant testimony that may be offered.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

85-7-1807. Court findings and order on petition to eliminate lands. The court may grant such petition in whole or in part and may make an order making such changes in the boundaries of the district by the exclusion of such lands therefrom as may be deemed advisable or as fact, right, and justice may require. Such order shall be conclusive upon all of the owners of lands within the district and shall be final unless appealed from to the supreme court within 60 days of the entry of said order. For the purposes of any such appeal, such order shall be regarded as a final judgment of said district court. A copy of such order, duly certified to by the clerk of said court, shall be filed for record within 30 days after such order is made and entered with the county clerk and recorder of the county wherein lands included within such district are situated; provided, however, there shall be omitted from such copy lands not situated in the county in which such copy is filed.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

85-7-1808. Extension of boundaries and addition of lands. The boundaries of any irrigation district may be extended at any time to include lands susceptible of irrigation by the works of the district or through exchange or substitution of water, as hereinafter provided, excluding and excepting therefrom all lands already under irrigation, lands having water rights appurtenant thereto, or lands that can be irrigated from sources more feasible than the district system, unless the owner of such lands shall consent in writing to have such lands included in said district; provided, however, that a petition be presented to the district court of the judicial district in which the irrigation district was organized, asking for such extension, upon terms to be fixed by the court, signed by the holders of title or evidence of title (evidenced as provided in 85-7-101 and 85-7-102) of the lands proposed to be included in the district, representing not less than two-thirds in acreage of said lands.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(1).

85-7-1809. Notice of hearing for addition of lands. When such petition is presented, the district court or judge thereof shall appoint a day for a public hearing. Notice of the hearing shall be given by the clerk of the court by publication at least once a week for at least 2 weeks in a newspaper published or of general circulation in the county in which the office of the district is situated. If any of said lands sought to be included in the district lie in a county or counties other than that in which the office of the district is situated, such notice shall also be likewise published in some newspaper published or of general circulation in each such other county or counties. If there be no such newspaper, then such notice shall be posted in at least three public places in the territory sought to be included.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(2).**

85-7-1810. Hearing and order on petition for addition of lands. At such public hearing, the district court shall hear those who may desire changes made in the proposed extension, all those whose lands are included or sought to be included in the district, and all other persons whose rights may be affected by the proposed extension. Such public hearing may be adjourned from day to day, not exceeding 20 days in all, and the court shall make an order either granting or denying said petition. If said petition is granted, said order shall describe the lands included in said extension and the terms on which said land shall be included, and a copy of said order shall be filed with the county clerk and recorder in the county wherein said lands are situated. The order of the district court shall be final and conclusive, the same as the order originally creating the district, unless appealed from to the supreme court within 10 days from the entry of the order. The extension of such boundaries shall not deprive the lands already in said district of an adequate supply of water for irrigation purposes.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(3).**

85-7-1811. Procedure to correct errors and omissions in orders or decrees. (1) The district court shall retain jurisdiction of any petition presented to establish an irrigation district or to enlarge and increase its boundaries or to exclude land therefrom for the purpose of correcting any omissions, defects, or errors in the proceedings of said court. The court shall have power to correct and, if necessary, to amend the order of the district court establishing the district, any order extending the boundaries thereof, or any order excluding lands therefrom, including the description of lands included or intended to be included in the district or excluded therefrom or intended to be excluded, the boundaries of the divisions into which it is divided, and any other matter which shall be before the court on the application to create the district, to enlarge or extend its boundaries, or to exclude lands therefrom. The court shall have and is hereby granted power and authority on application of the board of commissioners of the district to correct and amend the terms of any order or judgment of said court so that the same shall conform to the provisions of the statute under the authority of which such order was made. The board of commissioners of any district may adopt a resolution directing its president and secretary to prepare, execute, and file with the clerk of the district court a petition which shall set forth the following matters:

(a) the name of the district and a reference to the order in which the defect, error or omission, errors in description of lands included or excluded, or departure from the statute occurred;

(b) a statement of the defects, errors, omissions, irregularities, errors in description of lands included or excluded, or variance from the statutory requirements;

(c) a prayer for an order correcting said defects, errors, omissions, or irregularities.

(2) If the error, defect, omission, irregularity, or variance is in the description of any land or lands embraced in the district, the petition shall set forth the correct description of said lands, the names of the holders of title or evidence of title thereto, ascertained in the manner provided in 85-7-101 and 85-7-102, and if any holder is a nonresident of the county or counties in which the district lies, the post-office address of such nonresident owner, if known. Upon the filing of said petition, the court shall direct notice of the hearing thereof to be given in such manner as shall be deemed necessary to protect the rights and interests of the parties and, after a hearing of any parties intervening, shall enter an order correcting the defects, errors, omissions, or irregularities. If the defects, errors, omissions, or irregularities are in the description of the lands embraced in the district, the district court or judge shall direct the clerk of said court to publish, at least once a week for 2 successive calendar weeks, in some newspaper published in said county where said petition is filed, a copy of said petition, together with a notice stating the time and place fixed by said district court when and where a hearing on said petition will be had, and, if any portion of the lands within said district lies within any other county or counties, said petition and notice shall be published as provided above in a newspaper published in each such other county. If there be no newspaper published in such county, such petition and notice may be published in an adjoining county. The first publication of said petition and notice shall be not less than 30 days prior to the time mentioned in said notice for said hearing. If any holder of title or evidence of title to lands within the district is a nonresident of the county or counties in which the district lies, the clerk of said court shall, within 3 days after the first publication aforesaid, mail a copy of said petition and notice to each such nonresident whose post-office address is stated in said petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts.

(3) At the time specified in the notice the district court in which the petition aforesaid is filed shall hear the petition but may adjourn such hearing from time to time and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any person or persons interested, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested may appear and contest the application for the order prayed for in the petition, and the contestants and petitioners may offer any competent evidence pertinent to the prayer of the petition.

(4) The court may make such changes in the description of the lands embraced within the limits of the district as may be deemed advisable or as fact, right, and justice may require but shall not exclude from the district

any lands described as a part of said district in the order creating it after the district has issued bonds or entered into a contract with the United States under 85-7-1906. However, such lands may be excluded from a district which has entered into a contract with the United States under said section, provided the secretary of the interior shall give his consent to such exclusion.

(5) If, on final hearing, it is found by the court that the petition does not substantially comply with the foregoing requirements of this section or that the facts therein stated are not sustained by the evidence, then the court shall dismiss the petition at the cost of the petitioners and shall make and enter an order to that effect. If it is found that said petition substantially complies with said requirements and that the facts therein stated are sustained by the evidence, the court shall make and enter an order in accordance with the prayers of the petition.

(6) All orders and findings of the district court made under the provisions of this section shall be conclusive upon all owners of lands within the district and shall be final unless appealed from to the supreme court within 60 days from the date of entry of such order. A copy of such order, duly certified to by the clerk of said court, shall be filed for record within 30 days after such order is made and entered with the county clerk and recorder of the county wherein the lands included within such district are situated. There shall be omitted from such copy lands not situated in the county in which such copy is filed.

History: En. Sec. 1, Ch. 54, L. 1923; re-en. Sec. 7189.1, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1937; R.C.M. 1947, 89-1403.

85-7-1812 through 85-7-1820 reserved.

85-7-1821. Change of boundaries of irrigation districts indebted to United States. The boundaries of any irrigation district established and organized under the laws of the state of Montana and indebted to the United States for money loaned said district may be changed in the manner hereinafter prescribed. Such change in boundaries of said district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges of whatsoever kind or nature.

History: En. Sec. 1, Ch. 132, L. 1935; re-en. Sec. 7194.1, R.C.M. 1935; R.C.M. 1947, 89-1409.

85-7-1822. Petition to exclude lands. (1) Whenever lands have been included within the boundaries of any irrigation district of the character designated in 85-7-1821 which from their location or conformation cannot be successfully irrigated by the irrigation works or system constructed for that purpose or when the cost of irrigating the same has or will become burdensome upon the landowners of the district, the owners of said lands, with the consent of the board of commissioners of said district and the secretary of interior of the United States or such other federal authority, instrumentality, or agency as may be appropriate, may petition the district court of the county in which such lands are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands. The petition for this purpose must be signed by the owners of the land sought to be excluded and accompanied with the written consent of the board of commissioners of the district and the secretary of the interior of the United

States or such other federal authority, instrumentality, or agency as may be appropriate. Such petition shall set forth:

(a) the name of the district;

(b) a particular description of the land sought to be excluded or eliminated from the district;

(c) the names of the holders of title to the lands sought to be excluded;

(d) a brief description of the character of works, water rights, canals, or works owned and acquired by the district;

(e) a statement of the reasons why the lands sought to be excluded should be eliminated from the district;

(f) a prayer for the exclusion of the lands sought to be eliminated therefrom.

(2) The petition shall be accompanied with a map or plat of the district, showing thereon the lands sought to be eliminated therefrom, and a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions hereof, to pay all costs in and about the proceedings and hearing thereof in the event that said petition is denied.

History: En. Sec. 2, Ch. 132, L. 1935; re-en. Sec. 7194.2, R.C.M. 1935; R.C.M. 1947, 89-1410.

85-7-1823. Notice of hearing. On such petition being filed, the district court or judge thereof shall make an order fixing the time and place for a hearing and directing that notice be given. Thereupon the clerk of the court shall cause to be published at least once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the petition is filed, with preference given to a newspaper published in the county, a notice stating the time and place fixed by the district court when and where the hearing on the petition will be had and containing a brief statement of the matters set forth in the petition and the object thereof. If any portion of the lands sought to be excluded from the district lies within any other county or counties, the notice shall also be published as provided above in a newspaper of general circulation in the other county or counties, with preference given to a newspaper published in the other county or counties. The first publication of the notice may not be less than 30 days prior to the time mentioned in the notice for the hearing.

History: En. Sec. 3, Ch. 132, L. 1935; re-en. Sec. 7194.3, R.C.M. 1935; amd. Sec. 23, Ch. 460, L. 1977; R.C.M. 1947, 89-1411.

85-7-1824. Conduct of hearing. At the time specified in the notice, the district court in which the petition is filed shall hear the petition but may adjourn such hearing from time to time not exceeding 2 weeks in all. The court, upon application of the petitioners, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested whose lands or rights may be damaged or benefited by the granting of the petition or the exclusion of the lands from the district may appear and contest the same, and the contestants and petitioners may offer any competent evidence in regard thereto.

History: En. Sec. 4, Ch. 132, L. 1935; re-en. Sec. 7194.4, R.C.M. 1935; R.C.M. 1947, 89-1412.

85-7-1825. Court order and relief granted. (1) The court may grant such petition in whole or in part and may make an order making such changes in the boundaries of the district by the exclusion of such lands therefrom as the court may deem advisable or as fact, right, and justice may require. Upon making such order excluding any lands from the district the lands so excluded shall not be liable for further assessments by the district authorities for any purpose and shall be without right to claim any interest in the water rights, canals, or other property of the district.

(2) Such order shall be conclusive upon all owners of lands within the district and shall be final unless appealed from to the supreme court within 60 days from the entry of said order. For the purpose of such appeal, such order shall be regarded as a final judgment of said district court. A copy of said order duly certified by the clerk of court shall be filed for record within 30 days after such order is made and entered with the county clerk and recorder of the county wherein lands included within such district are situated.

History: En. Secs. 5, 6, Ch. 132, L. 1935; re-en. Secs. 7194.5, 7194.6, R.C.M. 1935; R.C.M. 1947, 89-1413, 89-1414.

85-7-1826. Interpretation of provisions. (1) Sections 85-7-1821 through 85-7-1826 are intended to supplement but not to repeal or to change in any way the procedure authorized by 85-7-1801 through 85-7-1807 in relation to changing the boundaries of irrigation districts.

(2) The term "owners" as used in 85-7-1821 through 85-7-1826 shall include any executor, administrator, trustee of an express trust, and the guardian of any ward.

History: En. Secs. 7, 8, Ch. 132, L. 1935; re-en. Secs. 7194.7, 7194.8, R.C.M. 1935; R.C.M. 1947, 89-1415, 89-1416(part).

85-7-1827 through 85-7-1830 reserved.

85-7-1831. Withdrawal of lands to organize separate or consolidated district for cooperation with federal projects — petition. (1) Whenever the holders of title or evidence of title to a part of the lands of an irrigation district organized and existing under the provisions of 85-7-101 through 85-7-103, which lands lie within and are served by an irrigation and/or drainage project constructed, operated, and maintained by the United States, desire a separation of said lands from said irrigation district for the purpose of forming a new district or combining with another existing district in order to cooperate with the United States as provided in 85-7-101 through 85-7-103, said separation, organization of a new district or combination with another existing district may be effected by petitioning the district court of the county in which the lands of the district or the greater portion thereof are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands and their incorporation in another existing district or in a new and separate district.

(2) Such changes shall not otherwise impair or affect the organization of the district now including said lands or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such changes not been made.

History: En. Sec. 1, Ch. 98, L. 1933; re-en. Sec. 7187.1, R.C.M. 1935; R.C.M. 1947, 89-1315.

85-7-1832. Petition for withdrawal of lands. The petition for this purpose must be signed by at least 75%, both in number and in acreage, of the holders of title or evidence of title (evidence as provided in 85-7-101 and 85-7-102) of the lands proposed to be eliminated from one district and incorporated in another existing district or in a new and separate district. Such petition must also bear the signature of the secretary of the interior of the United States, approving such proposed changes in district organization. Construction costs and other obligations due or to become due to the United States on account of the lands so separated and the participation of the owners thereof in contracts in effect between the original district and the United States or between the district to be extended by the addition of said lands and the United States shall be fixed and determined by said secretary of the interior.

History: **En. Sec. 2, Ch. 98, L. 1933; re-en. Sec. 7187.2, R.C.M. 1935; R.C.M. 1947, 89-1316.**

85-7-1833. Proceedings subsequent to presenting petition. When said petition is duly presented to the district court, all further proceedings with reference to lands, the owners of which seek to form a new and separate district, shall be as prescribed in 85-7-101 through 85-7-103, 85-7-1504(1), 85-7-1505, and 85-7-1507, and all further proceedings with reference to lands, the owners of which desire that they be incorporated in another existing district, shall be as prescribed in 85-7-1809 and 85-7-1810, insofar as said provisions are not inconsistent with the purposes of 85-7-1831 through 85-7-1833.

History: **En. Sec. 3, Ch. 98, L. 1933; re-en. Sec. 7187.3, R.C.M. 1935; R.C.M. 1947, 89-1317.**

85-7-1834 through 85-7-1840 reserved.

85-7-1841. Fixing of taxable acreage. Whenever any lot, tract, or parcel of land has been heretofore or may hereafter be included within the boundaries of any public irrigation district formed under the laws of this state and the acreage thereof fixed and stated in the decree for the creation of said district or in any other proceeding relating thereto is fixed at a greater number of acres than actually exist within such lot, tract, or parcel of land or at a greater number of acres than can be irrigated from the reclamation system of said district or whenever, from any action or proceeding by or on behalf of said district or its commissioners, any such lot, tract, or parcel of land included therein has been or is about to be assessed from a greater acreage than exists therein or can be irrigated from the reclamation system of said district, the owner or holder of title or evidence of title to said lands, as defined by the irrigation district acts, may have the taxable acreage contained therein fixed and adjudicated as provided for by 85-7-1841 through 85-7-1845. However, if any bonds have been issued with the approval and pursuant to confirmation by the court then no proceeding for the determination of the acreage shall be allowed to alter or reduce in any manner the acreage subject to the lien of such bonds, in principal or interest, or of the taxes or assessments to meet the interest or principal thereof while such bonds or the interest thereon are unpaid in whole or in part. Such proceeding may still be allowed to correct or determine acreage subject to taxes or assessments for maintenance and current expenses and insofar as the latter only are to be affected.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7190, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7190, R.C.M. 1935; R.C.M. 1947, 89-1404.

85-7-1842. Petition for fixing of taxable area. The owner or holder of title or evidence of title, as defined by the irrigation district acts, may file in the district court of the county wherein said lands are situated a petition praying that the acreage of the lands set forth and described in such petition may be permanently fixed and adjudicated, which petition shall set forth:

(1) the name or names of the owner or owners, holder of title or evidence of title thereto, who shall be the party or parties plaintiff therein;

(2) the names and kind and character of interest of every person owning, holding, or claiming any right, title, or interest in or to the lands described in said petition, who shall, where they do not appear as parties plaintiff under subsection (1), sit as parties defendant;

(3) the name of the district in which said lands are included, together with the name of the board of commissioners thereof and the secretary thereof, and said district, its commissioners and secretary shall be made parties defendant therein;

(4) a statement of the substance of all proceedings, orders, and decrees creating said districts and fixing the acreage of the lands therein described, together with any proceedings of the board of commissioners of said district or its officers relating to the acreage thereof, to such extent as to fully inform the court of the manner and extent to which said lands have been included and taxed or assessed in said district;

(5) the actual acreage of the lands described as irrigable from the reclamation system of said district;

(6) the excess of acreage complained of;

(7) the amount of taxes previously paid on such excess acreage;

(8) a general statement of the exact nature of the relief sought and the grounds therefor.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7191, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7191, R.C.M. 1935; R.C.M. 1947, 89-1405.

85-7-1843. Summons, publication, and court determination. (1) Upon the filing of such petition, summons shall be issued thereon and served upon all parties defendant thereto, with a copy of the petition attached thereto, in the same manner and in the same form as issued in civil actions. Whenever any necessary party thereto cannot, after due diligence, be found within the state of Montana, service upon such party or parties may be had by publication of a summons, which shall be obtained, issued, and published in the same manner as a published summons in a civil action.

(2) The provisions of Title 25 and the rules of pleading and practice applicable to civil actions generally shall apply, so far as applicable, to this proceeding.

(3) If the allegations to such petition be denied, the district court shall, when the time for appearance of the parties defendant thereto has expired

and said parties have appeared by answer or made default, proceed to hear and determine the issues in said proceedings as joined.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7192, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7192, R.C.M. 1935; R.C.M. 1947, 89-1406.

85-7-1844. Decree fixing amount of irrigable acreage. Upon the hearing of said petition, the court shall, by its decree, fix and determine the irrigable acreage contained in the lots, tracts, or parcels of land complained of. The acreage so fixed by such decree shall be the acreage upon which all assessments of said lands in said irrigation district shall thereafter be based. Upon said hearing the court shall determine the amount of taxes, if any, which have theretofore been levied and assessed upon any excess or nonexistent acreage and shall enter judgment in favor of the owner or holder thereof and against said district for the excess of taxes theretofore collected by said district or shall cancel such excess if the same shall not have been collected for the benefit of said district. However, no judgment for the recovery of excess taxes paid shall be entered against any district until there shall have been deducted therefrom any unpaid valid taxes and assessments levied and assessed for the benefit of said district against the lands described in said petition, and all sums so recovered shall bear interest at the rate of 8% per annum from the date of payment by the landholder. Said judgment shall bear legal interest from the date of entry, and the judgment so rendered may be paid by warrants or funds of said future taxation upon said lands. Costs shall be allowed to the plaintiff in the same manner as other civil actions.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7193, R.C.M. 1921; re-en. Sec. 7193, R.C.M. 1935; R.C.M. 1947, 89-1407.

85-7-1845. Appeal to supreme court. From any such judgment or decree an appeal may be taken to the supreme court by any party thereto at any time within 10 days of the entry of said judgment or decree. Such appeal shall be taken, perfected, and heard in the manner prescribed by Title 25 governing appeals from the district court to the supreme court. If no such appeal be taken within the time aforesaid or, if taken, the judgment or decree of the district court shall be affirmed by the supreme court, such judgment or decree shall be forever conclusive upon the parties thereto. In case contract has been made between the district and the United States, as provided in 85-7-1906, no change shall be made in the boundaries of the district, and the district court shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the district court.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7194, R.C.M. 1921; re-en. Sec. 7194, R.C.M. 1935; R.C.M. 1947, 89-1408.

Part 19

Operation of Districts

85-7-1901. Board plan for acquisition and construction. (1) For the purpose of purchasing or constructing the necessary irrigation canals or works or acquiring the necessary property and rights therefor and otherwise carrying out the provisions of this chapter, the board of commissioners of any irrigation district must, as soon as practicable after such district has been organized, formulate a general plan for such purchase, construction, and acquisition of such property. The board shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plans, as well as of procuring water from other and different sources, the amount of land that can be irrigated thereunder, and furnish the proper basis for an estimate of the cost of carrying out such plan and the value of any canal, works, property, or system of irrigation proposed to be purchased.

(2) All such surveys, examinations, maps, plans, and estimates shall be made by or under the direction and supervision of an irrigation engineer of well-known standing and competency, and all such necessary surveys, examinations, maps, plans, and estimates must be certified to by him. When all such are completed, he shall submit them with all proper field notes to and file them with the board of commissioners, accompanied by his report and recommendation thereon. This report shall include a discussion of said plans submitted by him to said board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, of the probability of being acquired or constructed within the estimate of the cost stated, and such general discussion and recommendation in regard to the engineering and financial features of the whole matter as in the judgment of such engineer shall be desirable for the information of the people of the district. Such report shall be accompanied by a map, when such is necessary for a proper explanation or understanding of the same.

(3) Upon receiving such report, said board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of said proposed property, canals, or irrigation works and system and within 10 days after arriving at such determination shall cause the secretary of said board to notify all persons or corporations holding title or evidence of title to lands within said district (ascertained as provided in 85-7-101 and 85-7-102) of the filing of said report and their determination thereon. Said notices shall be given through the United States mail by letter addressed to such person or corporation at the last known post-office address of each person or corporation aforesaid. A certificate of the secretary of the board as to the fact of mailing said notice, affixed to a copy of said notice and recorded in the record book of said board of commissioners, shall be sufficient and conclusive evidence of such fact.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(12).

85-7-1902. Management of district by board. (1) The board of commissioners of every irrigation district established and organized under and by virtue of parts 1 and 15 of this chapter shall constitute the corporate authority of said district.

(2) The board shall have the power and it shall be the duty of the members thereof to manage and conduct the business and affairs of the district; adopt a corporate seal therefor; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required and prescribe their duties.

(3) The board is hereby authorized and empowered to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this chapter or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by attorneys and in the name of such irrigation district.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the district and for the protection and preservation of the works and other property of the district, and the board may therein require the prompt payment of all taxes and assessments delinquent for not to exceed 2 years as a prerequisite to water service. The bylaws and rules shall be printed in convenient form for distribution in the district. All orders and resolutions shall be passed or adopted by a majority of the commissioners by a yea and nay vote, to be entered upon the records of the board.

(5) Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this chapter.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(intro.), (1), (10), (11), (13).

85-7-1903. Entry upon land by board or agent. The board and its agents and employees shall have the right to enter upon any land to make surveys and may locate the necessary irrigation works, including drainage works and the line for any canal or canals and necessary branches for the same, on any lands which in the judgment of the board may be deemed best suited for such location.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(2).

85-7-1904. Acquisition of water and waterworks by board. (1) The board shall have power and authority to:

(a) appropriate water in the name of the district;

(b) acquire by purchase, lease, or contract water and water rights; additional waters and supplies of water; canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation, or other legal means:

(i) lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and

(ii) such other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district system of irrigation works.

(2) The board shall have the privilege, if desired, to contract with the owner or owners of such canals, reservoirs, dams, and other works so purchased and in the course of construction for the completion thereof.

(3) No purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of $80,000, shall be final or binding upon the district, nor shall said sum be paid without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts void.

History: **En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(3), (5); amd. Sec. 4, Ch. 326, L. 1979.**

85-7-1905. Board agreements for joint operations or cooperation. (1) The board shall have power and authority to enter into and do any acts necessary or proper for the performance of any agreements with any state, county, district of any kind, public or private corporation, association, firm, or individual, or any number of them for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works, or other property of a kind which might lawfully be acquired or owned by the irrigation district.

(2) The board may acquire the right to store water in any reservoir or to carry water through any canal, ditch, or conduit not owned or controlled by the district and may grant to any owner or lessee of the right to the use of any water the right to store such water in any reservoir of the district or to carry such water through any canal, ditch, or conduit of the district.

History: **En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(4).**

85-7-1906. Relations with United States. (1) For the purpose of acquiring control over government land within the district and of complying with the provisions of the act of congress of August 11, 1916, the board shall have authority to make such investigations and base thereon such representations and assurances to the secretary of the interior as may be requisite.

(2) The board may enter into any obligation or contract with the United States:

(a) for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom and the necessary drainage works;

(b) for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, under the provisions of the federal

Reclamation Act of June 17, 1902, all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or

(c) for a water supply under any act of congress providing for or permitting such contract.

(3) In case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at 90% of their par value, to the amount to be paid by the district to the United States under any such contract. The interest on said bonds of the district and regularly paid to the United States is to be applied as provided in such contract. If bonds of the district are not so deposited, it shall be the duty of the board of commissioners to include, as part of any levy or assessment provided for in 85-7-2101 or 85-7-2132, an amount sufficient to meet each year all payments accruing under the terms of any such contract. The board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collections of money for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action. The board shall have full power to do all things required by the federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto, including the power to require the prompt payment of all charges as prerequisite to water service.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(6); (7); amd. Sec. 5, Ch. 326, L. 1979.

85-7-1907. Board power to provide sufficient water. Said board may also construct and maintain the necessary dams, reservoirs, and works for the collection and distribution of water for the district, from one or more sources and from different and additional sources; operate such works; secure, in any of the manners provided in this chapter, additional water supplies from the same or different sources; and do any and every lawful act necessary to be done in order that sufficient water may be furnished for irrigation purposes to all the lands in the district included at the time of its organization or at any time thereafter.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(8).

85-7-1908. Board powers over district property. (1) The board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this chapter, in the name of the district, to and for the uses and purposes herein expressed.

(2) The legal title to all property acquired by or for any irrigation district under the provisions of this chapter shall immediately and by operation of law vest in such district, as set forth in this chapter. The board of commissioners is hereby authorized and empowered to hold, use, maintain, acquire,

manage, occupy, and possess said property, as herein provided. Any property so acquired by the district may be conveyed to the United States insofar as the same may be needed for the construction, operation, and maintenance of works by the United States for the benefit of the district under any contract that may be entered into with the United States pursuant to this chapter.

History: (1)En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; Sec. 89-1301, R.C.M. 1947; (2)En. Sec. 30, Ch. 146, L. 1909; amd. Sec. 5, Ch. 153, L. 1917; re-en. Sec. 7200, R.C.M. 1921; re-en. Sec. 7200, R.C.M. 1935; Sec. 89-1605, R.C.M. 1947; R.C.M. 1947, 89-1301(9), 89-1605.

85-7-1909. Rights-of-way for irrigation works. (1) The board of commissioners shall have the power to construct irrigation works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal or canals may intersect or cross in such manner as to afford security to life and property. Said board shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. Every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersection and crossing, and if such railroad company or the owners and controllers of said property, thing, or franchise so to be crossed and said board cannot agree upon the amount to be paid therefor or the points or the manner of said crossing or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) Nothing contained herein shall require the payment to the state or any subdivision thereof of any sum for the right to cross any public highway with any such works. The right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain said works over and through any of the lands which are now or hereafter may be the property of this state.

History: En. Sec. 26, Ch. 146, L. 1909; re-en. Sec. 7196, R.C.M. 1921; re-en. Sec. 7196, R.C.M. 1935; R.C.M. 1947, 89-1601.

85-7-1910. Board power to dispose of district property. (1) The board of commissioners shall have the power, with the written consent of a majority in number and acreage of the owners of the lands in the district, to lease in whole or in part the system of canals and works or water belonging to the district, whenever such leasing may be deemed for the benefit of the district. When said board contemplates the leasing of the canals or works or water of such district, it shall so declare by resolution or order and give notice thereof by publishing the same in some newspaper published in the county in which the office of such irrigation district is situated at least 2 calendar weeks prior to the making of any lease. No such lease shall be made unless a majority in number and acreage of the holders of title or evidence of title to the lands in the district shall file with the board a written consent to make such lease. Such lease shall in no way interfere with any rights that may have been established by law at the time such lease is made, nor shall such lease operate so as to deprive any owner or owners of land in such district of the use of water from such works upon such lands. The board of commissioners shall require a good and sufficient bond to secure the faithful performance of the lease by the lessee.

(2) In addition to all other powers heretofore granted any irrigation district existing under the laws of Montana, for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer, and set over to the department all or any part of its property, including all water rights, rights-of-way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and headgates, as may be required by the department as a condition to furnishing such financial aid or assistance.

(3) If any irrigation district has ceased operation, such district prior to its dissolution shall be authorized and empowered to convey, assign, transfer, and set over to any person or association of persons all or any part of its property enumerated in subsection (2) for the purpose of irrigating and reclaiming any or all other land which can be served and irrigated therefrom.

History: (1)En. Sec. 29, Ch. 146, L. 1909; re-en. Sec. 7199, R.C.M. 1921; re-en. Sec. 7199, R.C.M. 1935; Sec. 89-1604, R.C.M. 1947; (2)En. Sec. 1, Ch. 191, L. 1937; amd. Sec. 166, Ch. 253, L. 1974; Sec. 89-1905, R.C.M. 1947; (3)En. Sec. 2, Ch. 191, L. 1937; Sec. 89-1906, R.C.M. 1947; R.C.M. 1947, 89-1604, 89-1905, 89-1906.

85-7-1911. Apportionment of water by board. (1) The board of commissioners shall apportion the water for irrigation among the lands in the district in a just and equitable manner, and the maximum amount apportioned to any land shall be the amount that can be beneficially used on said land, and such amount of water shall become and shall be appurtenant to the land and inseparable from the same but subject to reduction as hereinafter provided.

(2) In the event of a shortage of water, the amount of water delivered to each particular tract or piece of land shall be reduced proportionately.

(3) All surplus water belonging to the district may be sold or disposed of by the board for the benefit of the district.

(4) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto.

History: (1)En. Sec. 32, Ch. 146, L. 1909; amd. Sec. 6, Ch. 145, L. 1915; re-en. Sec. 7202, R.C.M. 1921; re-en. Sec. 7202, R.C.M. 1935; amd. Sec. 1, Ch. 314, L. 1977; Sec. 89-1607, R.C.M. 1947; (2)En. Sec. 33, Ch. 146, L. 1909; amd. Sec. 7, Ch. 145, L. 1915; re-en. Sec. 7203, R.C.M. 1921; re-en. Sec. 7203, R.C.M. 1935; Sec. 89-1608, R.C.M. 1947; (3), (4)En. Sec. 34, Ch. 146, L. 1909; amd. Sec. 8, Ch. 145, L. 1915; re-en. Sec. 7204, R.C.M. 1921; re-en. Sec. 7204, R.C.M. 1935; Sec. 89-1609, R.C.M. 1947; R.C.M. 1947, 89-1607, 89-1608, 89-1609.

85-7-1912. Exchange of water by board. (1) Whenever any canal constructed, owned, or controlled by the district crosses any creek, stream, water channel or course, the water of which is used to irrigate land lying below such canal, the district shall have the right to contract with the owner or owners of the right to the use of the water or waters in any such stream, creek, water channel or course for an exchange of water and to supply him with water from the district system. The contract shall be in writing, signed and acknowledged by all the parties thereto before some officer authorized to take acknowledgments, and shall be filed and recorded in the office of the clerk and recorder of the county in which the creek, stream, water channel or course is situated. The acknowledgment shall be certified by such officer in the manner that deeds are now required to be certified to entitle them to be recorded. Thereafter, such district shall have the right to supply such land below the canal, whether such land is included in the district or not, with water from the works of the district, and the owner or lessee of such land shall, in such case, be furnished with the same quantity of water as that to which such owner or lessee would be entitled out of such creek, stream, water channel or course had the district works not been built.

(2) The district shall have the right to appropriate and take possession of the water so replaced and shall have the same right to such water as the owner or lessee of the land had, so long as such water shall be replaced by a like quantity of water from such works. The appropriating and taking of such water by the district shall never deprive such owner or lessee of the right to retake and use the same should such owner or lessee at any time be prevented from having or using a like quantity of water from such works. The district shall also have the right to make appropriation and take possession of such water at any point and to sell, lease, or use such water on any land, either above or below the canal, and the appropriation of such water at any point or selling, leasing, or using the same shall not prejudice the right of the district to the water and shall not increase the rights of the owner or owners of any other water right on such creek, stream, water channel or course.

(3) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto.

History: En. Sec. 36, Ch. 146, L. 1909; amd. Sec. 9, Ch. 145, L. 1915; re-en. Sec. 7206, R.C.M. 1921; re-en. Sec. 7206, R.C.M. 1935; R.C.M. 1947, 89-1611.

85-7-1913. Board to maintain records. (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district in the form prescribed by the department of community affairs. The department of community affairs shall prescribe forms for the use of irrigation districts and examine them as provided by law for the examination of the affairs of county officers. The books and records shall be open to the inspection of any landowner of the district the same as other public records.

(2) The department of community affairs shall notify the secretaries of the districts of the time of presenting the books and records at the courthouse for examination.

(3) If a district is appointed fiscal agent of the United States or is authorized by the United States to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district which are in possession or control of the secretary or board.

(4) The failure of the board of commissioners to comply with this section or 85-7-1914 is grounds for removal from office, and the county attorney of

any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district and shall be paid as are other bills against the districts.

History: En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R.C.M. 1921; re-en. Sec. 7260, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971; amd. Sec. 105, Ch. 348, L. 1974; amd. Sec. 52, Ch. 213, L. 1975; R.C.M. 1947, 89-2107(1), (2), (4).

85-7-1914. Board to file annual report. The board of commissioners shall annually file with the county clerk and recorder of the county in which the district is located, within 10 days after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount spent during that time and shall publish the report at least once in a newspaper of the county.

History: En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R.C.M. 1921; re-en. Sec. 7260, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971; amd. Sec. 105, Ch. 348, L. 1974; amd. Sec. 52, Ch. 213, L. 1975; R.C.M. 1947, 89-2107(3).

85-7-1915 through 85-7-1920 reserved.

85-7-1921. Distribution system defined. The words "distribution system", as used in 85-7-1922 through 85-7-1925, shall denote the entire works and property of all irrigation districts, including main ditches and canals, laterals, by-laterals, headgates, flumes, spillways, boxes, and all other appliances and means by which the waters of any irrigation district are or shall be apportioned or distributed for use.

History: En. Sec. 1, Ch. 63, L. 1935; re-en. Sec. 7207.1, R.C.M. 1935; R.C.M. 1947, 89-1613.

85-7-1922. Regulation, supervision, apportionment, and control of water distribution. In addition to all other powers granted them by the laws of Montana, boards of commissioners of all irrigation districts, now or hereafter organized under any law of this state, shall have the power and authority to regulate, supervise, apportion, and control the furnishing and delivery of water through the distribution system of the district. Such authority to regulate, supervise, apportion, and control shall not apply to users who have water rights or ditch rights, established, acquired by court decree, use, appropriation or otherwise, at the time or prior to the organization of such district, without regard to whether said distribution system or any portion thereof belongs to the district or to the owner of lands served by said district.

History: En. Sec. 2, Ch. 63, L. 1935; re-en. Sec. 7207.2, R.C.M. 1935; R.C.M. 1947, 89-1614.

85-7-1923. Entry on land. In carrying out the authority granted them by 85-7-1921 through 85-7-1925, it shall be lawful for boards of commissioners of irrigation districts to enter upon the lands of any user of water supplied by said district for the purpose of installing, adjusting, or regulating headgates, lock boxes, or other devices for regulating the flow of water or apportioning the equitable distribution thereof.

History: En. Sec. 3, Ch. 63, L. 1935; re-en. Sec. 7207.3, R.C.M. 1935; R.C.M. 1947, 89-1615.

85-7-1924. Interference with commissioners or distribution system — penalty. Any person who in any manner interferes with the commissioners of an irrigation district or their lawful agent or employee in the carrying out of the powers conferred by 85-7-1921 through 85-7-1925 or who changes or tampers with any lock box, headgate, or other device for the apportionment or distribution of water installed by or under the authority of the commissioners or who in any manner obstructs or changes the flow of water in the distribution system of any irrigation district without authority of the commissioners of the district shall, in the discretion of the commissioners, be subject to a forfeiture of his right to the delivery of water through the distribution system of the district so long as such acts continue and is guilty of obstructing a public officer or criminal mischief, as appropriate, and is punishable as provided by 45-7-302 or 45-6-101, as applicable.

History: En. Sec. 4, Ch. 63, L. 1935; re-en. Sec. 7207.4, R.C.M. 1935; amd. Sec. 24, Ch. 460, L. 1977; R.C.M. 1947, 89-1616.

85-7-1925. Installing and assessing costs of distributing or measuring devices. Whenever, in the judgment of the commissioners of any irrigation district, it is necessary for the proper measurement, distribution, or apportionment of the water of the district to install lock boxes, headgates, or other devices for the distribution of water at the point where any lateral is taken out of a main ditch or canal or at a point where any sublateral is taken out of a lateral for further division or distribution of water, they shall have the authority to procure and install the same and to assess the cost thereof against the lands affected thereby.

History: En. Sec. 5, Ch. 63, L. 1935; re-en. Sec. 7207.5, R.C.M. 1935; R.C.M. 1947, 89-1617.

85-7-1926 through 85-7-1930 reserved.

85-7-1931. Use of water for irrigation a public use. (1) The use of all water required for the irrigation of the land of any district formed under the provisions of part 1, together with the rights-of-way for canals and ditches, sites for reservoirs, and all property required in fully carrying out the provisions of this chapter, is hereby declared to be a public use, subject to the regulations and control of the state in the manner prescribed by law.

(2) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto.

History: En. Sec. 31, Ch. 146, L. 1909; amd. Sec. 5, Ch. 145, L. 1915; re-en. Sec. 7201, R.C.M. 1921; re-en. Sec. 7201, R.C.M. 1935; R.C.M. 1947, 89-1606.

85-7-1932. Noninterference with navigation or water rights. Navigation shall never in anywise be impeded by the operation of this chapter, nor shall any vested interest in or to any mining or agricultural water rights or ditches or in or to any water rights, reservoirs, or dams now used beneficially by the owners or possessors thereof in connection with any mining or agricultural industry or by persons purchasing or renting the use thereof or in or to any other property now used, directly or indirectly, in carrying on or in promoting the mining or agricultural industry ever be affected by or taken under its provisions, save and except that rights-of-way may be acquired over the same. The right of eminent domain shall not be otherwise considered abridged by the provisions hereof.

History: **En. Sec. 27, Ch. 146, L. 1909; re-en. Sec. 7197, R.C.M. 1921; re-en. Sec. 7197, R.C.M. 1935; R.C.M. 1947, 89-1602.**

85-7-1933. Diversion of waters. Nothing herein contained shall be deemed to authorize the diversion of the waters of any river, creek, stream, canal, or ditch from its channel to the detriment of any person or persons having an interest in such river, creek, stream, canal, ditch, or the waters therein.

History: **En. Sec. 28, Ch. 146, L. 1909; re-en. Sec. 7198, R.C.M. 1921; re-en. Sec. 7198, R.C.M. 1935; R.C.M. 1947, 89-1603.**

85-7-1934. Lands under irrigation — inclusion in district. (1) Any land already under irrigation from any source may be included in any irrigation district, either at the time of the organization of such district or at any time thereafter, and such land shall be entitled to receive and shall be given the same amount of water necessarily used thereon at the time of such inclusion. The canals, ditches, flumes, dams, or other works previously used to irrigate such land may be used or supplanted either wholly or in part by the district works. The owner of such land, canals, ditches, flumes, dams, or other works shall be entitled to compensation for any and all damage sustained by reason of the appropriation of the same or by the construction of said district works.

(2) Lands already under irrigation, lands having water rights appurtenant thereto, or lands which can be irrigated from sources more feasible than the district system shall not be included within such district unless the owner of such lands shall consent in writing to have such lands included in said district.

(3) Districts formed to cooperate with the United States may extend their boundaries to include such lands upon petition of the owners of two-thirds only of the acreage of the lands to be included, and the boundaries shall be susceptible of change as provided in 85-7-1808 through 85-7-1811 and 85-7-1841 through 85-7-1845.

(4) All lands having water rights appurtenant thereto which are served by a system of irrigation works supplying more than 10,000 acres of land may, in the discretion of the court, be included in the proposed district, on petition of at least a majority both in number and acreage of the holders of title or evidence of title to the land having water rights appurtenant thereto and served by the same system of irrigation works.

History: **En. Sec. 35, Ch. 146, L. 1909; amd. Sec. 6, Ch. 153, L. 1917; amd. Sec. 4, Ch. 116, L. 1919; re-en. Sec. 7205, R.C.M. 1921; re-en. Sec. 7205, R.C.M. 1935; R.C.M. 1947, 89-1610.**

85-7-1935. Lands under irrigation — limits on charges for costs. Where lands already under irrigation are included in any district, the water and irrigation works irrigating the same belonging to the owner of said lands, such lands shall not be charged with any tax or assessment for construction or for payment of the interest or principal of any bonds issued to secure money for construction or purchase of the district irrigation works or for any payments other than for operation and maintenance due or to become due under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, except with the consent of the owner thereof, which consent shall be filed with the recorder of deeds of the county in which such lands are situated. Such lands shall be assessed for administrative and maintenance purposes the same as other lands in the district.

History: En. Sec. 37, Ch. 146, L. 1909; amd. Sec. 10, Ch. 145, L. 1915; re-en. Sec. 7207, R.C.M. 1921; re-en. Sec. 7207, R.C.M. 1935; R.C.M. 1947, 89-1612.

85-7-1936 through 85-7-1940 reserved.

85-7-1941. Contracts. (1) The construction by the district of all irrigation works of every kind whatsoever amounting to $5,000 or more shall be done by contract.

(2) Before any such contract is let, the board of commissioners shall employ competent engineers to make surveys, plans, maps, and estimates, which shall include everything necessary to show the entire cost in detail of everything necessary to complete the work required to irrigate any of the lands in the district under the proposed system.

(3) Notice of any contract to be awarded for the construction of such works shall state where the plans and specifications may be seen and shall be published at least once a week for 3 successive calendar weeks in a newspaper published or of general circulation in the county where the office of the district is located. Sealed bids shall be called for in such published notice, and bids shall be opened in public.

History: En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part).

85-7-1942. Competitive bidding. The contract shall be awarded only to the lowest responsible bidder, who shall be required to give bond for the faithful performance and completion of the contract. The board shall have the right to reject any and all bids in its discretion.

History: En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part).

85-7-1943. Exceptions for certain projects. The provisions of 85-7-1941 and 85-7-1942 shall not apply to:

(1) any contract for the completion of works in course of construction by private owners, from whom said works may be acquired under the provisions of 85-7-1904 or 85-7-1905;

(2) any contract between the district and the United States.

History: En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part).

85-7-1944 through 85-7-1950 reserved.

85-7-1951. United States contracts — loans, sinking fund, and investment. The board of commissioners of any irrigation district established and organized under and by virtue of the laws of Montana, whenever deemed advisable and to the interest of the district, shall have the power and authority to enter into any obligation or contract with the United States under any act of congress and the rules and regulations established thereunder, providing for or permitting such obligation or contract, for the purpose of obtaining from the United States a loan of money to be used by the district for the liquidation of bonded or other outstanding indebtedness of the district or for doing or causing to be done, under the supervision of the secretary of the interior of the United States, any construction, betterments, or repair work necessary to place the irrigation system of the district in good operating condition. The board shall also have the power and authority to create, by proper levy and collection of assessments, a sinking fund which shall be available for the construction of betterments to the irrigation system of the district, as may become necessary during the term of any contract made hereunder. Said sinking fund for said purpose, which shall be designated the ".... District Sinking Fund for Betterments", shall be in such an amount and shall be created within such time as may be agreed upon between the district and the United States. The board shall also have the power and authority to invest any surplus in the sinking fund herein provided for in interest-bearing securities of the United States or of the states approved by the secretary of the interior and to deposit said securities with the federal reserve bank or branch thereof.

History: **En. Sec. 1, Ch. 24, L. 1931; re-en. Sec. 7264.10, R.C.M. 1935; R.C.M. 1947, 89-2120.**

85-7-1952. United States contracts — assessments. In any contract entered into between an irrigation district and the United States hereunder, the board of commissioners shall have the power to levy assessments for the United States contract fund against all of the land within the district for any and all of the purposes enumerated in the laws of Montana and, in addition thereto, the power to levy assessments in compliance with such contract, including such deficiency assessments as will enable the district to meet established or estimated delinquencies in making payments to the United States because of the failure of landowners to pay the assessments levied against their lands in the district.

History: **En. Sec. 2, Ch. 24, L. 1931; re-en. Sec. 7264.11, R.C.M. 1935; R.C.M. 1947, 89-2121.**

85-7-1953. Amount owed United States — lien and special tax. All amounts to be paid to the United States under any contract made hereunder between the district and the United States shall be a general obligation of the district, and said amounts to be paid to the United States shall be a lien upon the irrigation system of the district. All lands now within the district or hereafter embraced within the district shall be subject to a special tax or assessment for the payment of all amounts to be paid to the United States under any such contract between the district and the United States, and said special tax or assessment shall constitute a first and prior lien on the land against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

History: **En. Sec. 3, Ch. 24, L. 1931; re-en. Sec. 7264.12, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1955; R.C.M. 1947, 89-2122.**

85-7-1954. Assumption of operations by United States upon default. In addition to other legal remedies, the board of commissioners of the district shall have the power and authority to provide in any contract executed between the United States and the district hereunder that in case of default for more than 12 months in the payment of any installments due under such contract, the control, operation, and maintenance of the district may, in the discretion of the secretary of the interior, be assumed by the United States and the delivery of water withheld until payments are duly made in accordance with the contract requirements.

History: **En. Sec. 4, Ch. 24, L. 1931; re-en. Sec. 7264.13, R.C.M. 1935; R.C.M. 1947, 89-2123.**

85-7-1955. Liquidation of indebtedness with federal funds. When money is provided by the United States for liquidating bonded indebtedness of any irrigation district, the county treasurer is authorized and empowered to cancel the district bonds so liquidated and surrender them to the United States, taking therefor a receipt signed by the secretary of the interior, which receipt shall be placed in the records of the county treasurer and shall be conclusive evidence of the cancellation and surrender of the district bonds.

History: **En. Sec. 5, Ch. 24, L. 1931; re-en. Sec. 7264.14, R.C.M. 1935; R.C.M. 1947, 89-2124.**

85-7-1956. Petition necessary to contract with United States. No contract shall be made with the United States hereunder except upon a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district. Such petition shall be addressed to the board of commissioners, shall set forth the aggregate amount of money to be borrowed from the United States and the purpose or purposes thereof, shall have attached thereto an affidavit certifying the signatures to said petition, and shall be filed with the secretary of the board of commissioners. Such petition may consist of one or more parts or papers.

History: **En. Sec. 6, Ch. 24, L. 1931; re-en. Sec. 7264.15, R.C.M. 1935; R.C.M. 1947, 89-2125.**

85-7-1957. United States contracts — court approval required. (1) The board of commissioners of any irrigation district, before the making of any contract with the United States hereunder, shall commence a special proceeding in the district court of the state, by which the proceedings of the board and of the district leading up to the making of any such contract and the validity of the terms thereof shall be judicially examined and approved and affirmed or disapproved and disaffirmed.

(2) The practice and procedure for the confirmation of any step or action, as provided in subsection (1) shall be as nearly as possible in conformity with the practice and procedure now provided for the confirmation before the issuance and sale of bonds of an irrigation district. The court may approve and affirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings, and insofar as possible, the court shall remedy and cure all defects in said proceedings.

History: **(1)En. Sec. 7, Ch. 24, L. 1931; re-en. Sec. 7264.16, R.C.M. 1935; amd. Sec. 39, Ch. 460, L. 1977; Sec. 89-2126, R.C.M. 1947; (2)En. Sec. 8, Ch. 24, L. 1931; re-en. Sec. 7264.17, R.C.M. 1935; Sec. 89-2127, R.C.M. 1947; R.C.M. 1947, 89-2126, 89-2127.**

85-7-1958. Power to contract with United States cumulative. Sections 85-7-1951 through 85-7-1958 shall not limit the power and authority of an irrigation district or the commissioners thereof to contract with the

United States under other applicable statutes but shall be cumulative thereto.

History: **En. Sec. 9, Ch. 24, L. 1931; re-en. Sec. 7264.18, R.C.M. 1935; R.C.M. 1947, 89-2128.**

Part 20

Indebtedness, Bonds, and Bankruptcy

85-7-2001. Limitations on debt-incurring power. (1) The board of commissioners or other officers of the district may not incur any debt or liability, either by issuing bonds or otherwise, except as provided in this chapter. No irrigation district may become indebted, in any manner or for any purpose in any one year, in an amount exceeding 15% of the assessed valuation of the district, except as provided in subsection (2).

(2) (a) For the purpose of organization; for any of the immediate purposes of this chapter; to make or purchase surveys, plans, and specifications; for stream gauging and gathering data; or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district and may cause warrants of the district to issue therefor.

(b) For the purpose of organization, for any of the immediate purposes of this chapter, or to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur (in addition to the 15% limitation of subsection (1)) an additional indebtedness not exceeding 10% of the assessed valuation of the district and may cause warrants of the district to issue therefor.

(c) The limitation of subsection (1) does not apply to warrants issued for unpaid interest on the valid bonds of any irrigation district.

(d) The limitation of subsection (1) does not apply to any bonds issued under this chapter pursuant to a provision which expressly supersedes the limitation.

(3) Any debt or liability incurred in excess of the limitations provided by the irrigation district laws is void.

History: **En. Sec. 38, Ch. 146, L. 1909; amd. Sec. 1, Ch. 110, L. 1913; amd. Sec. 1, Ch. 127, L. 1913; re-en. Sec. 7208, R.C.M. 1921; re-en. Sec. 7208, R.C.M. 1935; amd. Sec. 32, Ch. 234, L. 1971; amd. Sec. 25, Ch. 460, L. 1977; R.C.M. 1947, 89-1701.**

85-7-2002 through 85-7-2010 reserved.

85-7-2011. Exemption of irrigation district property. The bonds issued under the provisions of this part, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and all other personal property belonging to any irrigation district organized under the laws of Montana and not operating for profit may not be taxed for state, county, or municipal purposes.

History: **En. Sec. 39, Ch. 146, L. 1909; re-en. Sec. 7209, R.C.M. 1921; re-en. Sec. 7209, R.C.M. 1935; amd. Sec. 2, Ch. 492, L. 1977; R.C.M. 1947, 89-1702.**

85-7-2012. Purposes for which bonds may be issued. The board of commissioners of a district established under the provisions of part 1 may authorize and issue negotiable coupon bonds for the district for the purpose of providing the necessary funds for:

(1) constructing the necessary irrigation canals and works, including drainage works, and constructing works for the generation and distribution of electricity within the district and for acquiring the property and rights necessary therefor;

(2) acquiring, by purchase or otherwise, waters, water rights, canals, reservoirs, reservoir sites, irrigation works, drainage works, and works for the generation and distribution of electricity, whether such works are constructed or partially constructed;

(3) meeting the expense incurred incident to the construction or acquisition of such works and property, including administrative, engineering, and legal expenses;

(4) assuming, as principal or guarantor, indebtedness to the United States on account of district lands;

(5) providing a sufficient amount of money to pay the interest on all negotiable coupon bonds of the district for a period not exceeding 5 years;

(6) redeeming or paying all or any portion of the existing indebtedness of the district, evidenced by outstanding bonds; delinquent interest coupons and accrued interest; or warrants, together with all delinquent and accrued interest, whether such indebtedness has or may hereafter become payable at the option of the district, by consent of the bondholders or by any lawful means; or

(7) otherwise carrying out the provisions of the irrigation district laws.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(1).

85-7-2013. Petition requirements. No bonds provided for in 85-7-2012 through 85-7-2015 may be authorized or issued by or on behalf of any irrigation district organized hereunder and no contract may be made with the United States as provided in 85-7-1906 except upon a petition signed by at least 60%, in number and acreage, of the holders of title or evidence of title to lands included within the district or by at least 75%, in number and acreage, of the holders of title or evidence of title to such lands who are residents of the county or counties in which lands of the district are situated. The petition shall be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes thereof, have attached thereto an affidavit verifying the signatures to the petition, and be filed with the secretary of the board of commissioners. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of such district, such bonds may be authorized and issued in the manner provided for by 85-7-2019.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(2).

85-7-2014. Procedure after petition filed. Upon the filing of the petition, the board of commissioners shall, by appropriate order or resolution, authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the petition; fix the numbers, denominations, and maturity or maturities of the bonds; specify the rate of interest thereon and whether payable annually or semiannually; designate the place of payment of the bonds and the interest coupons, within or without the state of Montana; prescribe the form of the bonds and interest coupons to be attached thereto; and provide for the levy of a special tax or assessment as provided in this chapter on all the lands in the district for the irrigation and benefit of which the district was organized and the bonds are issued or the contract is to be made, sufficient in amount to pay the interest on and principal of the bonds when due and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(3).

85-7-2015. Effect of contracting with United States. If contract is to be made with the United States as provided in 85-7-1906 and bonds are not to be deposited with the United States in connection with the contract, the board of commissioners need not authorize the issuance of bonds, or if bonds are required in addition to the contract, the commissioners may authorize bonds only for the amount needed in addition to the contract. Such order or resolution shall also provide for the confirmation proceedings in the district court as provided in 85-7-2016 through 85-7-2018.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(4).

85-7-2016. Confirmation by district court. (1) Within 10 days after the adoption of the order or resolution mentioned in 85-7-2014, the board of commissioners shall file a petition in the district court of the judicial district where the office of the board is located to determine the validity of the proceedings relative to the issuance of the bonds and the levy of the special tax or assessment.

(2) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by giving notice. The petition shall set forth:

(a) generally, the establishment and organization of the district;

(b) a certified copy of the petition mentioned in 85-7-2013;

(c) a certified copy of the order or resolution mentioned in 85-7-2014;

(d) a prayer for the confirmation of the proceedings of the board stated in the petition and for the confirmation of the bond issue and the special tax or assessment levied to pay the bonds and interest thereon.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(1), (2).

85-7-2017. Hearing and procedure in the district court. (1) Upon the filing of this petition in the district court, the court shall fix the time for the hearing of the petition, which may not be less than 15 days from the date of filing the petition in the court, and shall order the clerk of the court to give notice of the filing of the petition and the date of the hearing thereon by publication at least once a week for 2 calendar weeks in a newspaper published or of general circulation in the county where the office of the board of commissioners of the district is situated and also by posting a written or printed copy of such notice in at least three public places in each division of the district, the first of such publications and such posting to be not less than 15 days prior to the date fixed for the hearing.

(2) The notice shall state the substance of the petition and the time and place fixed for the hearing thereon and that any person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners with respect to such matters may, on or before the day fixed for the hearing of the petition, answer the petition and may appear at the hearing and contest the granting of the prayer of the petition and the entry of any order of confirmation.

(3) The provisions of Title 25 respecting the answer to a verified complaint are applicable to an answer to the petition. The persons so answering the petition are the defendants in the proceeding, and the board of commissioners is the plaintiff. Every material statement of the petition not specifically controverted by the answer shall be taken as true, and every holder of title or evidence of title to lands included in the district failing to answer the petition shall be considered to admit as true all the material statements thereof. The procedure in such action shall be determined by Title 25.

(4) Any person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners of the district in connection with such matters and the entry of any order of confirmation may enter his appearance in such proceedings and answer the petition and contest the granting of the prayer of the petition.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(3) thru (6).

85-7-2018. District court findings and order — appeal. (1) Upon the hearing, the district court shall find and determine whether the provisions and requirements of the preceding section have been complied with and whether notice of the filing of the petition in the district court and of the time and place of the hearing has been given for the time and in the manner prescribed and may examine and determine the regularity, legality, and validity of the proceedings preliminary and relative to the issuance of the bonds and the levy of the special tax or assessment in the petition mentioned and the legality and validity of the bonds and special tax or assessment and all actions taken by the board of commissioners in connection with such matters and shall hear all objections filed to the proceedings or any part thereof or to the issuance of the bonds or the levy of the special tax or assessment or any portion thereof. The court, in inquiring into the regularity, legality, and validity of the proceedings, shall disregard any error, omission, or other irregularity which does not affect the substantial rights of the parties to the proceedings. The court may ratify, approve, and confirm the proceedings in whole or in part and may ratify, approve, and confirm the bonds and special tax or assessment and enter its judgment accordingly.

(2) From any such judgment, an appeal may be taken to the supreme court at any time within 10 days from the entry of the judgment. The appeal shall be taken, perfected, and heard in the manner prescribed by Title 25 covering appeals from district courts to the supreme court. If no appeal is taken in time or if taken and the judgment of the district court is affirmed by the supreme court, the judgment is final. The costs of the proceedings shall be allowed or apportioned between the parties in the discretion of the court.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(7), (8).

85-7-2019. Refunding bonds. (1) Any irrigation district may issue refunding bonds.

(2) An irrigation district may issue refunding bonds for the purpose of redeeming or paying the indebtedness or any portion thereof of the district, whether represented by existing and outstanding bonds, interest coupons thereof, or warrants, including accrued and unpaid interest on the bonds, coupons, and warrants, and whether such indebtedness is due or not due or has or may become payable at the option of the district, by consent of the bondholders or warrant holders, or by any legal means and whether such indebtedness is now existing or may be created, and funds in the treasury of the district are not available for the payment of the same. The refunding bonds may be issued in one or more series. The petition for the refunding bonds, signed as required by law by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district and addressed to the board of directors or commissioners of the district, may contain the following specifications, in addition to the matters now required by law:

(a) how many series of bonds shall be issued; and

(b) the terms, conditions, and liens of the bonds and the terms and conditions upon which each of the series of bonds shall be exchanged for outstanding bonds of the district if the same are to be exchanged and not sold.

(3) The specifications provided for in subsection (2), when set forth in the petition, are controlling upon the board of directors or commissioners. The petitioners shall in the specifications set forth the contract of exchange to be made, with particularity. The contract may include any term, requirement, grant, transfer of property or rights, covenant, or condition considered by the petitioners to be in the best interest of the district. The petition shall state that the board of directors or commissioners of the district may authorize and direct the issuance of bonds according to the specifications of the petition, make any such contract, and bind the irrigation district under the contract.

History: (1)En. Sec. 1, Ch. 155, L. 1929; re-en. Sec. 7226.1, R.C.M. 1935; amd. Sec. 19, Ch. 315, L. 1974; Sec. 89-1712, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 155, L. 1929; re-en. Sec. 7226.2, R.C.M. 1935; amd. Sec. 29, Ch. 460, L. 1977; Sec. 89-1713, R.C.M. 1947; R.C.M. 1947, 89-1712, 89-1713.

85-7-2020. Details relating to bonds. (1) All bonds issued under the provisions of this part shall run for a period not longer than 40 years from their date but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after 5 years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued may run for a longer period than 40 years from the date of issue. The bonds shall bear interest from their date until paid, payable annually or semiannually with the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. The bonds and interest coupons shall be payable at such place or places within or without the state of Montana as the board of commissioners shall prescribe.

(2) The bonds shall be of such denomination or denominations and in such form as the board of commissioners shall prescribe. An issue of bonds is defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of commissioners shall fix the date of the bonds, or they may divide any issue into two or more divisions and fix different dates for the bonds of each division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

(3) All bonds issued hereunder shall be signed by the president and attested by the secretary of the board under the corporate seal of the district, and each of the interest coupons to be attached to the bonds shall be executed by the signatures of the president and secretary. Each bond shall be signed and each interest coupon shall be executed by the president and secretary of the board of commissioners who may be in office at the date of the bond and coupons or at any time thereafter prior to the delivery of the bond to the purchaser from the district.

(4) The board of commissioners may provide for the registration of bonds in their discretion. The secretary of the board of commissioners and county treasurer shall each keep a record of the bonds sold or otherwise disposed of; their date, number, amount, maturity, or maturities; to whom sold; rate of interest; and the place or places of payment.

History: En. Sec. 42, Ch. 146, L. 1909; amd. Sec. 1, Ch. 17, Ex. L. 1919; re-en. Sec. 7212, R.C.M. 1921; amd. Sec. 8, Ch. 157, L. 1923; re-en. Sec. 7212, R.C.M. 1935; amd. Sec. 12, Ch. 260, L. 1959; amd. Sec. 33, Ch. 234, L. 1971; amd. Sec. 28, Ch. 460, L. 1977; R.C.M. 1947, 89-1705.

85-7-2021. Liens of bonds. (1) All bonds issued hereunder and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, shall be a lien upon all the lands originally or at any time included in the district for the irrigation and benefit of which said irrigation district was organized and said bonds were issued and for the benefit of which such contract between the district and the United States was made, except upon such lands as may at any time be included in such district on account of the exchange or substitution of water under the provisions of 85-7-1912, if any there be; and all such lands shall be subject to a special tax or assessment for the payment of the interest on and principal of said bonds. All amounts to be paid to the United States under any such contract between the district and the United States and said special tax or assessment shall constitute a first and prior lien on the land against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

(2) All liens herein created shall remain upon the lands for a period of 8 years after the date of maturity of the obligation. Thereafter, the lands and the titles thereto shall be free from any such liens.

History: En. Sec. 43, Ch. 146, L. 1909; amd. Sec. 12, Ch. 145, L. 1915; amd. Sec. 8, Ch. 153, L. 1917; amd. Sec. 8, Ch. 116, L. 1919; re-en. Sec. 7213, R.C.M. 1921; re-en. Sec. 7213, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1973; R.C.M. 1947, 89-1706.

85-7-2022. Sale of bonds. Bonds issued under the provisions of this part shall be issued, negotiated, and sold by or under the direction of the board of commissioners but shall never be sold for less than 90% of their par value and accrued interest thereon to date of delivery. The board may sell said bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the purposes for which said bonds were issued.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(1).

85-7-2023. Notice of sale of bonds. Before making any sale the board shall, by resolution at a meeting, declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale. The board shall cause such resolution to be entered in the minutes and notice of the sale to be given by publication thereof at least once a week for 3 successive calendar weeks in some newspaper in the county where the office of the board of commissioners is located and in any other newspaper within or without the state at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of bonds, until the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds or any portion or portions thereof to the highest responsible bidder or bidders. Said board may reject any or all bids. In case no award is made, the board thereafter may either readvertise said bonds or any part thereof for sale or sell the same or any part thereof at private sale. Coupons evidencing unearned interest shall be detached and canceled.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(2).

85-7-2024. Issuance of bonds for direct contract payments. Any bonds issued hereunder may, in the discretion of the board of commissioners, be issued direct in payment and satisfaction of the contract or purchase price of any irrigation works, canals, water, water rights, or other property constructed or acquired by or for the district or may be deposited with the United States as provided in 85-7-1906.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(3).

85-7-2025. Cancellation of unused bonds. Any bonds which may have been authorized but which have not been sold or deposited as security for funds advanced or to be advanced and against which the state, United States, or any other person, firm, or corporation shall have no claim to or equity in may be canceled by the board of commissioners by appropriate resolution or order. After the cancellation of said bonds, the same shall not be sold or otherwise disposed of and shall be invalid and of no effect, and the board shall have no authority to replace such canceled bonds without an authorization from the members of the district similar to that which provided for their issuance.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(4).

85-7-2026. Delivery of bonds. If bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county in which the office of the district is located. The county treasurer, after making a complete record of them, shall deliver them to the purchaser upon receipt of the purchase price. Delivery of the bonds may be made by the county treasurer to the purchaser at any place or places inside or outside this state, and the county treasurer may receive the proceeds of the sale of the bonds at the place or places of delivery.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R.C.M. 1921; amd. Sec. 10, Ch. 157, L. 1923; re-en. Sec. 7215, R.C.M. 1935; amd. Sec. 1, Ch. 258, L. 1967; amd. Sec. 145, Ch. 431, L. 1975; R.C.M. 1947, 89-1708(part).

85-7-2027. Disposition of bond proceeds. The county treasurer shall place the proceeds of the sale to the credit of the district, and the proceeds shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. The proceeds shall be spent only for the purpose for which the bonds were issued. If any portion of the funds realized from the sale of bonds is not needed immediately for the purpose for which the bonds were issued, the board of commissioners may direct the investment of the funds and any other surplus funds of the district or any portion thereof in interest-bearing securities of the United States or of the state of Montana or in interest-bearing certificates of deposit of national or state banks approved by the department of community affairs. A bank shall furnish an indemnity bond to be approved by the board of commissioners and the department of community affairs. The county treasurer shall transfer to the credit of the district and place to the credit of the fund or funds, as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R.C.M. 1921; amd. Sec. 10, Ch. 157, L. 1923; re-en. Sec. 7215, R.C.M. 1935; amd. Sec. 1, Ch. 258, L. 1967; amd. Sec. 145, Ch. 431, L. 1975; R.C.M. 1947, 89-1708(part).

85-7-2028 through 85-7-2030 reserved.

85-7-2031. Amending or supplementing United States contracts — effect on indebtedness. The board of commissioners of any irrigation district established and organized under and by virtue of the laws of Montana, whenever deemed advisable and to the interests of the district, shall have the power and authority to enter into any contract with the

United States supplementing or amending any original contract with the United States, said original contract having been entered into pursuant to the provisions of 85-7-1906 and 85-7-2012 through 85-7-2018; provided, that such supplementary or amendatory contract does not increase the amount of the principal indebtedness of the district to the United States as it exists at the date of the supplementary or amendatory contract authorized under the provisions of 85-7-2012 through 85-7-2015.

History: **En. Sec. 1, Ch. 71, L. 1933; re-en. Sec. 7215.1, R.C.M. 1935; R.C.M. 1947, 89-1709.**

85-7-2032. Amending or supplementing United States contracts — petition not necessary. In case any supplementary or amendatory contract shall be made with the United States hereunder, no petition as required by 85-7-2012 through 85-7-2015 shall be necessary, nor shall the board of commissioners of such irrigation district be required to proceed under 85-7-2016 through 85-7-2018 for a judicial confirmation of the making of such contract and the terms thereof. It shall be sufficient in the case of a contract made with the United States hereunder for the board of commissioners of any irrigation district to authorize the execution of the same by its president and secretary by appropriate resolution adopted at any regular or special meeting of said board of commissioners.

History: **En. Sec. 2, Ch. 71, L. 1933; re-en. Sec. 7215.2, R.C.M. 1935; R.C.M. 1947, 89-1710.**

85-7-2033 through 85-7-2040 reserved.

85-7-2041. Bankruptcy proceedings by irrigation districts. (1) The board of commissioners or directors of any irrigation district may, in the name and on behalf of such district, initiate and carry out proceedings for readjustment of the debts of such district, under Chapter IX of the federal Bankruptcy Act or similar provisions of any past or future federal bankruptcy act.

(2) This section is remedial in its nature and shall be liberally construed to effect its purpose, which is to permit irrigation districts to readjust their debts under federal bankruptcy acts and to confer upon the board of commissioners or directors thereof every power necessary therefor or reasonably incidental thereto.

History: **En. Secs. 1, 2, Ch. 110, L. 1939; R.C.M. 1947, 89-1903(part), 89-1904.**

Part 21

Taxes and Assessments

85-7-2101. Tax or assessment to pay bonds and interest. (1) All bonds and the interest thereon issued hereunder and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, shall be paid by revenue derived from a special tax or assessment levied upon all the lands included in the district, except upon those lands that have been included in the district on account of the exchange or substitution of water under the provisions of 85-7-1912, if there are any. All lands in the district at the time the bonds are issued and all lands subsequently included which are so chargeable under the provisions of this chapter shall be and remain liable to be taxed and assessed for the payment of the bonds and interest and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(2) The board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district mentioned in 85-7-2014, shall provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district and subject to taxation and assessment, sufficient in amount to meet the interest on the bonds promptly when and as the same accrues and to discharge the principal thereof at their maturity or respective maturities and to meet all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, at the times such payments by such contract become due and payable.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(part).

85-7-2102. Added lands to pay proportional share of bonded indebtedness. (1) Where a district is extended after the construction of works of irrigation, including drainage works, to include other irrigable lands, such included lands shall be chargeable with such proportion of the bonded indebtedness incurred or authorized to be incurred by any district and such proportion of the indebtedness incurred under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, as the district court shall order, as provided in 85-7-1808 through 85-7-1811 and 85-7-1841 through 85-7-1845. The board of commissioners of the district shall provide for the levy of a special tax or assessment against such included lands on account of said bonds and the interest thereon and on account of any payments under any contracts between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as provided in 85-7-1906.

(2) Said special tax or assessment shall be levied and collected as and in the manner as the special tax assessment against the lands of the original district on account of the payments under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, and on account of which said bonds and the interest thereon is provided for, levied, and collected. Upon the extending of any such district, the total of said bond indebtedness or indebtedness due to the United States shall be reapportioned, spread, and equalized upon and over the entire area thereof, as provided in 85-7-2021.

History: En. Sec. 47, Ch. 146, L. 1909; amd. Sec. 15, Ch. 145, L. 1915; amd. Sec. 9, Ch. 153, L. 1917; amd. Sec. 7, Ch. 116, L. 1919; re-en. Sec. 7233, R.C.M. 1921; re-en. Sec. 7233, R.C.M. 1935; R.C.M. 1947, 89-1802.

85-7-2103. All irrigable lands chargeable alike. (1) All irrigable lands in each irrigation district, except such lands that are included within the district because of the exchange or substitution of water under the provisions of 85-7-1912, shall pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be a charge of $5 to $25 against each separately owned tract of land regardless of its size, as provided in 85-7-2104. However, a separately owned tract of land of 1 acre or less and unable to receive water may be charged not more than the $5 minimum. Whenever water used for the irrigation of any lands within an irrigation district is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation shall be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in such manner as may be determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment shall be made by the board of commissioners and included each year in the assessment provided for by 85-7-2104.

(2) The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, shall be determined by the board of commissioners in such manner and upon such notice to the persons interested in the district as the board in its rules may provide. Whenever a contract has been made with the United States, the lands within the district, whether originally included or later annexed to the district, shall pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States. Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands so irrigated or that can be so irrigated through the built portion of the project shall pay for the cost of operating that portion of the project serving them with irrigation water and also shall pay such portion of the interest charges as its irrigable area bears to the irrigable area of the entire project. Whenever lands have appurtenant thereto a partial water right or partial rights in a system of irrigation other than that of the district, the amounts payable shall be equitably apportioned.

History: En. Sec. 48, Ch. 146, L. 1909; amd. Sec. 10, Ch. 153, L. 1917; amd. Sec. 1, Ch. 158, L. 1921; re-en. Sec. 7234, R.C.M. 1921; amd. Sec. 18, Ch. 157, L. 1923; amd. Sec. 1, Ch. 136, L. 1925; re-en. Sec. 7234, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1961; amd. Sec. 31, Ch. 460, L. 1977; R.C.M. 1947, 89-1803; amd. Sec. 1, Ch. 586, L. 1979.

85-7-2104. Annual tax levy — apportionment when tracts divided. (1) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs, and the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district, including any indebtedness incurred under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906. The board shall levy, against each 40-acre tract or fractional lot, as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than 40-acre tracts or in less than the platted lot, then against each such tract) of land in the district, that portion of the respective total amounts so to be raised which the total irrigable area of any such tract bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district shall be assessed and required to pay the same amount as every other acre of irrigable land therein, unless otherwise specifically provided. The board of commissioners may make a charge of $5 to $25 against each separately owned tract of land, regardless of its size. However, a separately owned tract of land of 1 acre or less and unable to receive water may be charged not more than the $5 minimum.

(2) In the event that the ownership of any such 40-acre tract or other subdivision of land in the district shall be divided after a special tax or assessment against the same has been levied, each or either of the owners of such tract or subdivisions shall be entitled to have such special tax or assessment equitably apportioned to and against said divisions of such tract or subdivisions, so that each owner shall be enabled to pay such special tax or assessment against his portion of such tract or subdivision and have the same discharged from the lien thereof. In no event shall the charge against any separately owned tract of land be less than $5. However, a separately owned tract of land of 1 acre or less and unable to receive water may be charged not more than the $5 minimum.

History: **En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(1), (2); amd. Sec. 2, Ch. 586, L. 1979.**

85-7-2105. Cancellation of tax levy under certain conditions. Whenever the board of commissioners has provided for the payment of any indebtedness of the district by levy of a special tax or assessment and thereafter makes provision for the payment of said indebtedness by the issuance of bonds, said board may cancel any portion or all of said levy theretofore made to raise funds to pay said indebtedness. Whenever said board has provided for the payment of any indebtedness of the district by the authorization of bonds and the levy of a special tax or assessment to pay the principal of and interest on said bonds and thereafter cancels said issue of bonds as provided for in 85-7-2025, said board may cancel any portion or all of said levy theretofore made to raise funds to pay the principal of or interest on said bonds so canceled and refund to the respective persons paying the same the funds, if any, in the custody of the county treasurer collected for the purpose of meeting the principal of and interest on such bonds so canceled.

History: **En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(3).**

85-7-2106. Back assessments. Any land or lands which may for any reason have escaped assessment in any previous year or years may be assessed or listed for the omitted years and omitted charges in any subsequent year at the time of the making of the assessment in and for such subsequent year, but no such assessment shall be made later than 3 years after the occurrence of such omission.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(4).

85-7-2107. Procedure for the determination of irrigable area. (1) For the purpose of determining the number of acres of irrigable lands in each 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then in each such tract) of land in the district, the board of commissioners of any irrigation district established under part 1, whenever considered advisable and at any time except as otherwise provided, may cause a careful topographical survey and map of the lands to be made, as well as a specific examination of the character of the soil of each tract. Upon completion of the survey and maps and examination, the board shall give notice that at a meeting of the board, to be held at the office of the board on a day to be fixed in the notice, the board will determine the irrigable area of each tract of land in the district and that it will hear and consider any objection on the part of any landowner in the district to the determination and to adjustment of the irrigable area of the district or of any lands within any tract or subdivision thereof. It is not necessary to describe the tracts in the notice. The notice shall be given by publication once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the office of the board is located, and whenever lands of any irrigation district lie in more than one county, the notice shall also be published in a newspaper or newspapers of general circulation in each county. The last publication of the notice shall be at least 5 days prior to the date fixed for the meeting.

(2) At the meeting, the board shall proceed to determine and fix the number of acres in each tract or subdivision irrigable from the works or proposed works of the district and shall hear all persons interested who may appear and shall continue in session from day to day (exclusive of Sundays and legal holidays) as long as may be necessary and until the determination of irrigable area is completed. The board shall hear and receive all evidence offered, including maps and surveys caused to be prepared by it as well as maps and surveys prepared by any owner of lands. Upon such determination, the irrigable area so fixed shall become and thereafter be the acreage upon which any special tax or assessment shall be levied, and each irrigable acre shall pay at the same rate as every other acre of irrigable land in the district, except as otherwise provided by law.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(part).

85-7-2108. Taxes to be lien upon land. Any special tax or assessment levied for any purpose is a lien upon the entire 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then against each such tract) of land in the district of which the irrigable area forms a part, and the lien shall attach to the entire tract as of January 1 in the year in which the special tax or assessment is levied.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(part).

85-7-2109. List of all lands in district to be prepared. Upon completing the determination, the board shall fix, by appropriate resolution or order, the total acreage and the irrigable acreage of each tract or subdivision and shall cause to be prepared a list of all lands in the district, which list shall contain an accurate description of each 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then of each such tract) of land in the district, the total acreage and the number of irrigable acres therein as so fixed and determined, and the name of the owner or holder of title or evidence of title thereof, ascertained as provided in 85-7-101 and 85-7-102. This list, when completed and adopted, shall be filed in the office of the board of commissioners and shall remain there for public inspection. A certified copy of the resolution and list shall be filed with the county clerk and recorder of each county in which any portion of the lands in the district is situated. The lands not situated in the county in which such copy is filed shall be omitted from the copy.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(3).

85-7-2110. Nonirrigable lands not to be taxed. No special tax or assessment may be levied against any 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever lands are owned in less than 40-acre tracts or in less than the platted lot, then against each such tract) found by the board to contain no irrigable land; nor may any lien created after the order of determination attach to any such tract, nor may the owner or owners of any tract or tracts have any vote or votes in any proceeding or election under the provisions of Chapter 146 of the Laws of 1909 or any amendment thereof or act supplementary thereto, after the making of such order, unless their land or a portion thereof is found by the board to contain an area irrigable from the works or proposed works of the district.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(4).

85-7-2111. Refunds and cancellation of excess taxes. Upon the determination provided for in 85-7-2107 through 85-7-2113, the board of commissioners may refund any taxes paid or cancel any unpaid taxes or assessments levied upon an acreage in excess of that so fixed by the order of determination and whenever necessary may issue warrants therefor.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(5).

85-7-2112. Confirmation of board actions by district court. (1) Within 60 days after the resolution adopting the list, the board of commissioners may petition the district court for confirmation of their acts in determining the irrigable area and in refunding or canceling any taxes or assessments. The majority in number and acreage of the holders of title or evidence of title to lands in the district, ascertained as provided in 85-7-101 and 85-7-102, may likewise within such 60-day period petition the district court for review of the actions of the board of commissioners. However, one of these proceedings, if prosecuted to determination, is exclusive of the other. Upon such proceeding, the court may order any assessment of taxes upon any land or lands to be reduced or raised according to the irrigable area as found by the court or taxes previously levied upon any area shown to be excessive to be refunded or canceled.

(2) The provisions of 85-7-1808 through 85-7-1810 regarding the procedure as well as the right and time to appeal apply to any proceeding instituted pursuant to this section, provided nothing in this section affects or impairs the lien of any bonds issued by the district. If confirmation proceedings are held and a certified copy of the order of confirmation is filed with the county clerk and recorder of the county in which any portion of the lands is situated, it is not necessary to file in the office the certified copy of the resolution and order of the board or of the list provided for in this section.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(6), (7).

85-7-2113. Effect of federal involvement. Whenever districts have been established in order to cooperate with the United States under the federal reclamation laws or under any act of congress which permits the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of construction works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, the determination of the irrigable area of the lands in the district may be made by the board of commissioners in the manner provided in 85-7-2107 through 85-7-2112 or by the United States at the option of the latter, and, if the United States determines the irrigable area, the proceeding for the apportionment and distribution of the costs of the proposed works or improvements provided for in 85-7-2114 through 85-7-2116 may not be had.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(8).

85-7-2114. Apportionment of costs when bonds issued. (1) Whenever a petition for the issuance of bonds of any irrigation district established under the provisions of part 1 has been filed as provided in 85-7-2012 through 85-7-2015, the board of commissioners of the district shall examine or cause to be examined each 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then each such tract) of land in the district and cause a careful topographical survey and map to be made in the manner provided for in 85-7-2107. Upon such examination, the board shall determine the number of irrigable acres in each such tract and shall apportion and distribute the cost of the works or improvements for which the bonds are to be issued over the tracts within the district according to the irrigable area in each of the tracts or subdivisions, so that each such irrigable acre is required to bear the same burden of such costs as each other irrigable acre in the district, except as otherwise provided by law. The special tax or assessment levied to meet the principal of and interest on the bonds so authorized is a lien upon the entire tract of which such irrigable area forms a part or portion as of January 1 of the year in which the special tax or assessment is levied, and the number of irrigable acres in each such tract as so determined may not be diminished but may be increased during the term for which any such bonds are issued or until the bonds are liquidated in full.

(2) Whenever a proceeding for the determination, in whole or in part, of the irrigable area of the lands in the district has already been had or a topographical survey or maps thereof prepared or a court confirmation of prior proceedings had, in part or in full, the board may, in its discretion, adopt all or such portions of the prior proceedings and need not cause an additional survey or maps or examination of any of such tracts to be made or redetermine the irrigable area of any such tract.

(3) The board shall make such determination after the hearing and shall fix the total acreage and the irrigable acreage and shall cause a list of such irrigable area to be made and filed, and the proceedings of the board in connection with such determination, including the hearing and notice of the hearing and order or resolution fixing the irrigable area and the preparation and filing of the list, shall conform to the requirements set forth in 85-7-2107 through 85-7-2113. At the hearing, the board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of the authorized bond issue, and any tax levied for such purposes is a lien upon the entire tract of which the irrigable area forms a part. If any landowner in the district appears before the board at that time and pays in cash the amount fixed against his land as its proportion of the amount found necessary for the purposes for which the bonds were authorized and are to be issued, his land shall be excluded from the lien of the bond issue and the amount of bonds intended to be issued shall be reduced by the amount of such payment. Any person interested who fails to appear before the board at the meeting may not thereafter be permitted to contest the proceedings of the board or any part thereof, except upon special application to the court in the proceedings for the confirmation of the bonds and a showing of reasonable excuse for failure to appear before the board of commissioners.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(1) thru (3).

85-7-2115. Objection by landowner. In case any such landowner makes objection to the proceedings of the board in determining the irrigable area in his own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district for the purposes of the proposed bond issue and the objection is overruled by the board, the objection without further proceedings shall be regarded as appealed to the district court and shall, with the other proceedings of the board at the meeting, be heard at the proceedings to confirm the bonds, as provided in 85-7-2016 through 85-7-2018, and when so confirmed, the order overruling such objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement thereto shall become final, binding, and conclusive upon the landowner and upon the district, unless appealed from as provided in 85-7-2018.

History: **En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(4).**

85-7-2116. Restrictions on reduction of taxable acreage. Whenever the irrigable area of the lands in any irrigation district has been determined and confirmed, no owner or holder of title or evidence of title to lands in the district, during the period when any bonds thereafter authorized are issued and outstanding, may have the taxable acreage of his lands fixed or adjudicated in the manner provided by 85-7-1841 through 85-7-1845 in such manner or to such extent as to reduce the acreage subject to the payment of the bonds or interest thereon or in such manner as to affect the security of the bonds or interest thereon.

History: **En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(5).**

85-7-2117. Conclusiveness of tax or assessment. In determining the proper and just tax or assessment to be levied against any land for district purposes, the finding of the board of commissioners of the district, in the absence of fraud or mistake, shall be conclusive and final, except as herein otherwise provided.

History: **En. Sec. 50, Ch. 146, L. 1909; re-en. Sec. 7237, R.C.M. 1921; re-en. Sec. 7237, R.C.M. 1935; R.C.M. 1947, 89-1809.**

85-7-2118. United States contracts — cancellation of assessment on amended contracts. In any case where the board of commissioners of any irrigation district has made a levy or assessment under the provisions of 85-7-2104 through 85-7-2106 and included therein any amount due the United States under any contract or agreement for the purchase of any irrigation works or for the operation and maintenance of any irrigation works, while acting as fiscal agent for the United States, or under any authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, as provided in 85-7-1906, and the United States shall thereafter modify or supplement such contract or agreement so as to eliminate certain charges under said contract or agreement or so as to make such charges due at a later date or dates than originally provided in said contract or agreement, said board of commissioners are empowered to direct the cancellation of said levy or assessment theretofore made to raise funds to pay the United States that are under such modification or supplemental contract or agreement made due and payable at a later date or dates.

History: **En. Sec. 1, Ch. 103, L. 1923; re-en. Sec. 7235.3, R.C.M. 1935; R.C.M. 1947, 89-1807.**

85-7-2119. United States contracts — assessments where district partly outside state. Where a contract has been entered into or may be hereafter entered into between an irrigation district and the United States, the board of commissioners shall have the power to levy assessments against all of the land within the district for any and all of the purposes hereinbefore enumerated and, in addition thereto, the power to levy assessments against any or all of the lands in said district in compliance with such contract. Where irrigation works lie partly in the state of Montana and partly in an adjacent state, the board of commissioners may contract with the district or districts in the adjacent state for the mutual construction of works, operation and maintenance of works, drainage, and other matters and things pertaining to said works and shall have the power to levy assessments against any or all lands within the district necessary to carry out the provisions of such contract.

History: En. Sec. 1, Ch. 4, Ex. L. 1921; re-en. Sec. 7236, R.C.M. 1921; amd. Sec. 2, Ch. 103, L. 1923; re-en. Sec. 7236, R.C.M. 1935; R.C.M. 1947, 89-1808.

85-7-2120 through 85-7-2130 reserved.

85-7-2131. Funds for payment of each series of bonds to be kept distinct. When more than one series of bonds shall have been issued by a district, the funds for the payment of each series shall be kept separate and distinct. When contract is made between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as provided in 85-7-1906, the funds for the payment to be made under any such contract shall be kept separate and distinct.

History: En. Sec. 52, Ch. 146, L. 1909; amd. Sec. 17, Ch. 145, L. 1915; re-en. Sec. 7238, R.C.M. 1921; re-en. Sec. 7238, R.C.M. 1935; R.C.M. 1947, 89-1810.

85-7-2132. Sinking fund for straight maturity bonds. When straight maturity bonds are issued, the board of commissioners of the district shall create and maintain a sinking fund sufficient to pay and discharge the bonds at maturity. If the bonds are issued for 20 years or less, there shall be annually levied for the sinking fund a special tax or assessment sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if the bonds are issued for more than 20 years, it is not necessary to levy a special tax or assessment for sinking fund until the 20th year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth part of the aggregate amount of the principal of the bonds.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(part).

85-7-2133. Role of the county officers in collection of tax or assessment. (1) A certified copy of such resolution shall be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment therein provided for shall be levied and collected as prescribed and when so collected shall, by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all bonds issued under the provisions of this chapter and interest thereon so long as any of the bonds or interest coupons remain outstanding and unpaid. Whenever the payments are made for amounts due or to become due to the United States under a contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, the special fund shall be known as the United States contract fund.

(2) The county treasurer of the county where the office of an irrigation district is located is the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except payments on bonds and interest for which no order is necessary. If any portion of the funds belonging to a district has been collected for the purpose of establishing a reserve fund, the county treasurer shall pay such portion to the district on order of the district's board of commissioners who may invest the same in state or federal bonds or in savings certificates of institutions insured by the federal deposit insurance corporation. Where moneys of a district in the United States contract fund established pursuant to subsection (1) are in excess of those needed to pay a district's next succeeding annual contract obligation or obligations to the United States, such excess or any part thereof may, upon order of the district's board of commissioners and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. Such orders of the board of commissioners shall be signed by the president and secretary of the board and shall bear the official seal of the district.

History: (1)En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; Sec. 89-1801, R.C.M. 1947; (2)En. Sec. 53, Ch. 146, L. 1909; amd. Sec. 18, Ch. 145, L. 1915; re-en. Sec. 7239, R.C.M. 1921; re-en. Sec. 7239, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1971; amd. Sec. 34, Ch. 460, L. 1977; Sec. 89-1811, R.C.M. 1947; R.C.M. 1947, 89-1801(3), 89-1811.

85-7-2134. Levy of taxes and assessments by county commissioners. If for any reason a levy of taxes or assessments shall not be made for any irrigation district in any year by the board of commissioners of such district within the time provided by 85-7-2104, the board of county commissioners of the county in which such district is situated shall, not later than the second Monday in August, ascertain the total amount to be raised for all purposes of said district, make the levy which should have been made by board of commissioners of such district, and furnish the county clerk of such county with a list of the lands and the amount of taxes or assessments as provided in 85-7-2136, and such levy so made shall have the same force and effect as though made by the board of commissioners of such district. This section shall apply only to irrigation districts having a bonded indebtedness and actually in possession of a dependable water supply system and furnishing substantial amounts of water to bona fide users.

History: En. Sec. 1, Ch. 89, L. 1931; re-en. Sec. 7240.1, R.C.M. 1935; R.C.M. 1947, 89-1813.

85-7-2135. Transmission of funds from other counties. Where the lands of any district lie in more than one county, the district taxes or assessments collected in counties in which the principal office is not located shall be transmitted, on or before January 1 of each year, by the county treasurer of such county to the county treasurer of the county wherein the office of the district is located.

History: En. Sec. 55, Ch. 146, L. 1909; re-en. Sec. 7241, R.C.M. 1921; re-en. Sec. 7241, R.C.M. 1935; amd. Sec. 2, Ch. 78, L. 1961; R.C.M. 1947, 89-1814.

85-7-2136. Collection of taxes or assessment. (1) On or before the third Monday in August of each year the board of commissioners shall furnish the agent of the department of revenue in each county in which any of the lands of the district are situate a correct list of all the district lands in such county, together with the amount of the total taxes or assessments against said lands for district purposes. The agent of the department of revenue in each county shall immediately thereafter, and prior to the delivery of the assessment book to the county treasurer, cause said assessment roll to be entered in the assessment book of said county for each year.

(2) It shall be the duty of the county treasurer of each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes and assessments levied by any such district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102; provided the treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which such district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of such district tax or assessment, together with the penalty and interest to date of payment on such installment; provided that such payment shall not be deemed a redemption of said property from such tax sale but shall be credited on account of any redemption that may thereafter be made. In case of any payment pursuant to this subsection, a separate tax receipt shall issue showing exactly what assessments have been paid and shall show that no other tax on said real estate has been received by said treasurer; provided such county treasurer shall not collect or receive or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of such irrigation district has been levied unless the assessment levied for such irrigation district purposes be paid as herein permitted and the receipt therefor presented to the county treasurer at the time such taxes are paid, or paid at the same time.

History: (1)En. Sec. 54, Ch. 146, L. 1909; amd. Sec. 2, Ch. 96, L. 1919; re-en. Sec. 7240, R.C.M. 1921; re-en. Sec. 7240, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1945; amd. Sec. 65, Ch. 391, L. 1973; Sec. 89-1812, R.C.M. 1947 (2)En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; re-en. Sec. 2172.1, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1943; Sec. 84-4108, R.C.M. 1947; R.C.M. 1947, 84-4108(part), 89-1812.

85-7-2137. Failure to levy or collect tax or assessment. In the event that for any reason a special tax or assessment provided for cannot or may not be levied and collected in time to meet any interest falling due on any bonds issued, the board of commissioners shall provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated or by warrants drawn against the next district tax or assessment levied or to be levied. These warrants shall be in addition to those mentioned in 85-7-2001.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(4).

85-7-2138. Surplus in construction fund. In the event of any money remaining in the construction fund after the completion of any district project, the same may be transferred to an appropriate fund for the redemption of the outstanding bonds of the district.

History: En. Sec. 62, Ch. 146, L. 1909; re-en. Sec. 7257, R.C.M. 1921; re-en. Sec. 7257, R.C.M. 1935; R.C.M. 1947, 89-2104.

85-7-2139. Transfer of funds. The board of commissioners shall have power to transfer money from any one fund to any other fund, except that no money shall be drawn from the sinking fund or construction fund, except as specifically provided in this chapter; provided, that no money in the United States contract fund shall ever be diverted to any other fund.

History: En. Sec. 63, Ch. 146, L. 1909; amd. Sec. 20, Ch. 145, L. 1915; re-en. Sec. 7258, R.C.M. 1921; re-en. Sec. 7258, R.C.M. 1935; R.C.M. 1947, 89-2105.

85-7-2140. Investment of funds. The board of commissioners shall direct the investment of the funds in any bond sinking fund in interest-bearing securities whenever in their judgment the investment may be to the best interest of the district. All such securities shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(5).

85-7-2141. Proceeds of certain bonds. The provisions of 85-7-2026, 85-7-2027, 85-7-2101, 85-7-2132, 85-7-2133(1), 85-7-2137, and 85-7-2140, with reference to the disposition of the proceeds of bonds mentioned therein, the levy and collection of a special tax or assessment for the payment of the principal and interest of such bonds, the creation of a sinking fund, the issuance of warrants for the payment of interest, and the investment of the funds in any sinking fund created, shall apply to the bonds issued under Chapter 252, Laws of 1921. All other provisions of Chapter 146, Laws of 1909, as amended, with reference to the levy and collection of a special tax and assessment, not inconsistent or in conflict with the provisions of Chapter 252, Laws of 1921, shall apply to the bonds issued under Chapter 252, Laws of 1921, the same as to the bonds mentioned therein.

History: En. Sec. 6, Ch. 252, L. 1921; re-en. Sec. 7231, R.C.M. 1921; re-en. Sec. 7231, R.C.M. 1935; R.C.M. 1947, 89-1714.

85-7-2142. Misconduct in relation to bond funds. (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any irrigation district of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the irrigation district which they represent if they shall fail to perform any such duties so required by law, as in this section hereby specified, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund, as herein specified, for any purpose other than that permitted by law shall be jointly and severally liable to the irrigation district to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: En. Secs. 1, 2, Ch. 5, L. 1923; re-en. Secs. 463.1, 463.2, R.C.M. 1935; R.C.M. 1947, 59-534(part), 59-535(part).

85-7-2143. Prosecution for misconduct. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 85-7-2142. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

85-7-2144 through 85-7-2150 reserved.

85-7-2151. Delinquent sale and redemption. Delinquent sales of land for unpaid taxes or assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situated. The right of redemption shall in all cases be made the same as in cases where lands are sold for state or county taxes.

History: En. Sec. 56, Ch. 146, L. 1909; amd. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7242, R.C.M. 1921; re-en. Sec. 7242, R.C.M. 1935; R.C.M. 1947, 89-1815.

85-7-2152. Proceeds of sale. Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any extension of such district is sold by the treasurer of the county where such land is situated in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes and taxes or assessments of the irrigation district form all or a part of the taxes for which such lands are sold, the county treasurer making such sale or sales shall place to the credit of the proper funds of such irrigation district, out of the proceeds of the sale or sales, the total tax or assessment of the irrigation district, inclusive of the interest and penalty thereon as provided for by the general laws relating to delinquent taxes for state and county purposes, and whenever any such lands are struck off at such sale to the county where they are situated pursuant to the provisions of 15-17-207, the county treasurer of the county must, upon the issuance of the certificate of tax sale to the county, issue to the irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to the irrigation district from the lands and premises so sold, inclusive of the interest and penalty thereon, which certificate is evidence of and conclusive of the interest and claim of the irrigation district in, to, against, and upon the lands and premises so struck off to the county at the tax sale, and after the issuance of the certificate, the sum named therein and the taxes and assessments of the district evidenced thereby shall bear interest at the rate of 1% a month from the date of the certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described therein in the manner provided for by law, and duplicates of such certificates so issued to the irrigation district shall be filed in the office of the county clerk and county treasurer of the county with the certificate of tax sale of the lands and premises.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7243, R.C.M. 1921; re-en. Sec. 7243, R.C.M. 1935; amd. Sec. 35, Ch. 460, L. 1977; R.C.M. 1947, 89-1816.

85-7-2153. Assignment of debenture certificates. The certificates provided for by the preceding section hereof shall be assignable and may be sold or negotiated by the board of commissioners of said irrigation district and the proceeds thereof delivered to and deposited with the county treasurer of said county for proper credit to the respective funds of said irrigation district. Upon the sale, negotiation, or transfer thereof, as provided for above, the lien of said irrigation district shall vest in the purchaser thereof and is only divested by the payment to the purchaser or the county treasurer of said county, for his use, of the sum for which said certificate is issued and 1% additional for each month that elapses from the date of such certificate until redeemed as hereinafter provided for.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7244, R.C.M. 1921; re-en. Sec. 7244, R.C.M. 1935; R.C.M. 1947, 89-1817.

85-7-2154. Redemption of lands sold. Upon the redemption of any lands so sold for taxes in the manner provided for by 15-18-101, the county treasurer of said county, out of the redemption money, shall pay to the holder or holders of such certificate or certificates the sums for which the same were issued, with interest as therein provided to the date of the redemption of said lands.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7245, R.C.M. 1921; re-en. Sec. 7245, R.C.M. 1935; R.C.M. 1947, 89-1818.

85-7-2155. Sale by county commissioners when land not redeemed. When the lands and premises so sold for taxes and upon and against which the certificates have been issued for the taxes and assessments of the irrigation district are not redeemed within the time provided for by 15-18-101, the board of county commissioners of the county, within 3 months thereafter, shall cause these lands and premises to be sold as provided for by law, and out of the proceeds of the sale, the county treasurer of the county shall pay to the holder or holders of the certificates the sum for which the same were issued, with interest as provided for to the date of the sale of the lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this chapter have been issued may, upon such sale, be struck off or sold for a less sum than the amount of taxes and assessments of the irrigation district represented by the certificate, inclusive of the interest thereon, in addition to the state and county taxes, if any, against the same.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7246, R.C.M. 1921; re-en. Sec. 7246, R.C.M. 1935; amd. Sec. 36, Ch. 460, L. 1977; R.C.M. 1947, 89-1819.

85-7-2156. Proceedings where land struck off to county and not redeemed. In case the property so assessed for irrigation district purposes is struck off to the county, as provided for by law, and certificates of the taxes and assessments of said irrigation district issued thereon, as hereinbefore provided for, and the said lands and premises be not redeemed before the next annual assessment for irrigation purposes shall become delinquent thereon, then and in that event (whether said lands and premises be again sold by the county treasurer of said county or the sale thereof adjourned as provided for by 15-17-304 and 15-17-305), like certificates for each year's irrigation district taxes and assessments shall be issued against said land and shall be included in and satisfied by any redemption thereof, with interest as hereinbefore provided for, and shall in like manner be paid from the proceeds of sale of said lands by the board of county commissioners, if the same be not redeemed as provided for by law.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7247, R.C.M. 1921; re-en. Sec. 7247, R.C.M. 1935; R.C.M. 1947, 89-1820.

85-7-2157. Purchase of lands by district — revolving fund, credits, and expenditures. (1) At all sales of all lands for delinquent taxes where all or a portion of such delinquent taxes are taxes and assessments levied and assessed by any irrigation district against the lands to be sold, the commissioners of such irrigation district, if there be no other bidder for such land at such tax sale, may bid therefor the total amount of all delinquent taxes and assessments, penalty, and interest against such land, and thereupon the county treasurer shall strike off said lands to such irrigation district and issue certificates of tax sale to said irrigation district the same as such certificates of tax sales are issued to other purchasers. For the purpose of paying such taxes, assessments, interest, and penalties, the commissioners of such irrigation district shall have the power and authority to create by resolution a fund to be known and designated as the revolving fund for the purchase of tax certificates and titles and to provide funds for such revolving fund by levy, bond issue, or otherwise. The district may pay such taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against such revolving fund, provided that there shall be sufficient money in such fund to pay same in full upon demand.

(2) When taxes are paid by the district as provided in this part, the county treasurer shall distribute that portion of said tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment. However, if the board of commissioners of the irrigation district shall file with the county treasurer a certified copy of resolution passed by such commissioners requesting nondistribution by the county treasurer of the portion of the tax belonging to the district, the county treasurer shall not distribute that portion of said tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment, but the total amount due the irrigation district shall be credited by him to the revolving fund above specified. In such event, at the time of the sale by the district of the tax sale certificate or of the property obtained through such certificate, such funds as are realized from such sale must be deposited with the county treasurer, together with the rentals received from the property, and he shall credit the proceeds of such redemption sale or rental pro rata to the several funds of the district in accordance with the original levy or assessment.

(3) At the time of redemption or of the sale by the district of the tax sale certificate or of the property obtained through such certificate, such funds as

are realized must be deposited with the county treasurer, together with rentals received from the property. He shall credit the proceeds of such redemption, sale, or rentals to the above specified revolving fund to such extent as may be required, with the credit provided for above, to reimburse said revolving fund in full, if the sum realized permits, the overplus, if any, to be credited to the several funds of the district in accordance with the original levy and assessment. No expenditures shall be made from the revolving fund except for the purpose as herein specified, and when, by resolution of the board of irrigation district commissioners, such fund shall be deemed inactive, the balance remaining in said fund shall be transferred to a sinking fund to be applied upon any indebtedness which may have been incurred by the district by reason of the creation of such revolving fund, if any there may be.

History: **En. Sec. 1, Ch. 89, L. 1925; amd. Sec. 1, Ch. 57, L. 1929; re-en. Sec. 7248.1, R.C.M. 1935; R.C.M. 1947, 89-1822.**

85-7-2158. Purchase of lands by district — tax sale certificates and payment. (1) Any irrigation district may:

(a) purchase the certificate of tax sale issued to any county for lands sold at tax sale against which any of its taxes and assessments are delinquent; or

(b) if deed therefor has issued to the county, purchase such lands from the county by paying all state, county, city, school district, and other delinquent taxes together with penalty, interest, and costs of publication and sale to the county treasurer of the county making the sale.

(2) Such payment shall be made by the commissioners of such district issuing and delivering to the county treasurer a warrant drawn against the revolving fund of said district; provided there shall be sufficient money in said fund to pay same in full upon demand. Thereupon, such treasurer shall assign such certificate of tax sale to such irrigation district as in the case of the purchase thereof by any other person, or the commissioners of the county shall convey such lands to said district in case tax deed therefor has been issued to the county.

History: **En. Sec. 2, Ch. 89, L. 1925; re-en. Sec. 7248.2, R.C.M. 1935; R.C.M. 1947, 89-1823.**

85-7-2159. Issuance of tax deed. When there has been no redemption of the lands so sold at tax sale to an irrigation district or any other person or of the lands struck off to the county for which certificate of sale has been assigned to an irrigation district or any other person in the manner and within the time allowed by 85-7-2163 for the redemption of lands from such tax sales, the county treasurer of the county within which such lands are situated shall issue tax deed therefor to such irrigation district or other holder of certificate of sale.

History: **En. Sec. 3, Ch. 89, L. 1925; re-en. Sec. 7248.3, R.C.M. 1935; R.C.M. 1947, 89-1824.**

85-7-2160. Sale by district of purchased tax-deed lands. After the issuance of any such tax deeds to an irrigation district, the commissioners of such district shall have power to sell and convey the lands so purchased, or any part thereof, at either public or private sale whether or not the price received therefor equals the amount of delinquent taxes, assessments, penalties, interest, and costs against said lands. If such lands be offered for sale at public sale, such commissioners may reject any and all bids thereon. No such lands shall be sold by said commissioners at private sale until the same shall have been offered for sale at public sale, and no such lands shall be sold at private sale at a price less than the highest price bid therefor at the public sale at which such lands are offered. If no bid is received for such lands when the same are offered for sale at public sale, the commissioners may then sell the same in such manner and for such price as in their judgment they shall deem to be for the best interests of said district.

History: **En. Sec. 4, Ch. 89, L. 1925; re-en. Sec. 7248.4, R.C.M. 1935; R.C.M. 1947, 89-1825.**

85-7-2161. Action to quiet title in district. If any such lands are conveyed to any irrigation district, it may maintain an action to quiet title to said lands in said district in the manner provided by the laws of Montana for quieting title to real property.

History: **En. Sec. 5, Ch. 89, L. 1925; re-en. Sec. 7248.5, R.C.M. 1935; R.C.M. 1947, 89-1826.**

85-7-2162. Powers of district commissioners to acquire and manage tax sale lands. (1) In addition to the powers heretofore granted to irrigation districts, the commissioners of every irrigation district established and organized under and by virtue of the laws of the state of Montana shall have power to:

(a) purchase lands within their respective districts heretofore sold and conveyed to the county for nonpayment of taxes and assessments, purchase certificates of tax sales of such land when struck off to the county, take title thereto for their district;

(b) own, manage, operate, lease, sell, and dispose of the same for the use and benefit of their respective districts upon such terms as shall, in the judgment of the board of commissioners of such irrigation district, be deemed most advantageous to the district;

(c) sue and be sued in reference to said lands in the name of their respective irrigation districts; commence, maintain, and prosecute suits to quiet title to said lands and any and all other suits in equity or actions at law with reference thereto, the same as might be done by any other individual or corporate owners of such lands; and

(d) do any and all other acts or things necessary or beneficial for their respective districts in connection with such lands.

(2) Such lands shall be first offered for sale at public sale and the commissioners may reject any and all bids thereon, if in their judgment such bids are insufficient. No such lands shall be sold at private sale at a price less than the highest bid therefor at the public sale at which such lands are offered for sale, and if no bid is received for said land when said land is offered at public sale, the commissioners may then sell the same in such manner and at such price and upon such terms as in their judgment shall be for the best interests of said district.

(3) The board of commissioners of any irrigation district shall be and they are hereby authorized and empowered to do any and all things necessary to carry out the provisions and intentions of 85-7-2157 through 85-7-2164.

History: **En. Sec. 6, Ch. 89, L. 1925; amd. Sec. 1, Ch. 36, L. 1933; re-en. Sec. 7248.6, R.C.M. 1935; R.C.M. 1947, 89-1827.**

85-7-2163. Period of redemption — application for tax deed. The holder of such certificate of tax sale of such land, whether said holder be an irrigation district or individual, may, at any time after the expiration of 2 years from the date of sale of said property for delinquency, if same has not been redeemed within said period of 2 years from date of sale of said lands for delinquency, apply to the county treasurer, as provided by law for the issuance of a tax deed to said property, and upon such application, the county treasurer shall issue such tax deed, in the manner and form provided by law, to said holder.

History: **En. Sec. 7, Ch. 89, L. 1925; re-en. Sec. 7248.7, R.C.M. 1935; R.C.M. 1947, 89-1828.**

85-7-2164. Application of certain sections. Sections 85-7-2157 through 85-7-2163 shall apply only when or after said irrigation district shall have commenced delivery of water to any lands included in such irrigation district.

History: **En. Sec. 8, Ch. 89, L. 1925; re-en. Sec. 7248.8, R.C.M. 1935; R.C.M. 1947, 89-1829.**

85-7-2165. Partitioning interest in tax-deed lands in certain districts. (1) In any case where an irrigation district established under the law of this state has incurred a bonded indebtedness or other indebtedness but has not constructed or purchased any irrigation plant or system for the irrigation of land in the district and more than 10 years have expired since the date of the creation of the irrigation district, the board of commissioners of such irrigation district and also the board of county commissioners of the county in which the lands of the district or any part thereof are situated shall have power to enter into an agreement, on behalf of such irrigation district and such county, for the partitioning of the respective interests of the irrigation district and the county in lands to which the county has taken tax deed and to make all necessary conveyances and assignments to carry out such agreement in such manner that the respective interests of the county and the irrigation district shall be fully segregated and thereafter separately owned and controlled.

(2) The board of commissioners of such irrigation district shall have power to sell and convey such lands and interests so acquired by the irrigation district or any part thereof and any other property or assets which such irrigation district may hold, at either public or private sale, or transfer such lands or interests in lands or other assets to creditors of the district in payment of the indebtedness of such irrigation district, upon such terms as shall, in the judgment of the board of irrigation district commissioners, be deemed most advantageous to the irrigation district. The board of commissioners of such irrigation district and the board of county commissioners of the county in which the lands of such irrigation district or any part thereof are situated shall be and they are hereby authorized and empowered to do any and all things necessary to carry out the provisions and intentions of this section, the purpose of which is to enable such irrigation district to dispose of its assets in settlement of its liabilities and to be dissolved.

History: **En. Sec. 1, Ch. 207, L. 1943; R.C.M. 1947, 89-1830.**

85-7-2166. Liability of county treasurers. (1) The county treasurer to whom district funds or securities are entrusted shall be liable on his bond for the safekeeping of said funds and securities. Such funds shall be properly divided into the respective funds for which district taxes or assessments were levied; that is to say, United States contract fund; bond principal and interest fund; sinking fund to redeem bonds; maintenance fund; construction fund; and general fund. The construction fund shall be available for the payment of the purchase price of all works, water rights, or other property purchased by or for the district and all expenses incident thereto, as well as for the payment of the cost of construction of works, including cost of engineering, superintendence, and other expenses incident thereto. All warrants issued for preliminary and organization expenses and all administrative expenses shall be paid from the general fund.

(2) The county treasurer is authorized to receive, in lieu of cash, matured bonds and/or matured coupons or interest coupons maturing within the year in payment of any tax or assessment levied for the payment of bonds or interest on bonds. The county treasurer at any time, upon the order of the board of commissioners of the district, shall turn over to said board any bonds or securities held by him and required to be delivered to said board in accordance with the provisions of this chapter. All bonds and interest coupons so received or otherwise paid and all bonds of the district upon the payment thereof shall be immediately canceled and retained by the county treasurer as vouchers.

History: En. Sec. 57, Ch. 146, L. 1909; amd. Sec. 19, Ch. 145, L. 1915; re-en. Sec. 7249, R.C.M. 1921; amd. Sec. 1, Ch. 114, L. 1933; re-en. Sec. 7249, R.C.M. 1935; R.C.M. 1947, 89-1831.

85-7-2167. Sale or transfer of lands. Where any lands in any district are sold or transferred, either by deed, mortgage, foreclosure sale, or otherwise, such sale or transfer shall include the water belonging to and appurtenant to the land, whether or not the same is expressly stated in the deed, instrument of transfer, or decree, and such land shall be liable to special tax or assessment the same as if such sale or transfer had not been made.

History: En. Sec. 58, Ch. 146, L. 1909; re-en. Sec. 7250, R.C.M. 1921; re-en. Sec. 7250, R.C.M. 1935; R.C.M. 1947, 89-1832.

Part 22

Miscellaneous Provisions

85-7-2201. Limitation on actions attacking decrees. No suit, action, or proceeding shall be brought in any court in this state attacking the validity or regularity of any order or decree of the court purporting to establish a district hereunder or correcting or amending any order or decree creating a district after the expiration of 6 months from the date of the recording of the order establishing the district or the order correcting or amending the same. Nothing contained in this section shall be deemed or construed to confirm, approve, or validate any warrant issued, disbursement made, or contract entered into for the expenditure of money by the board of commissioners on behalf of any district.

History: En. Sec. 2, Ch. 54, L. 1923; re-en. Sec. 7231.1, R.C.M. 1935; R.C.M. 1947, 89-1715(part).

85-7-2202. Consolidation of appeals. If more than one appeal shall be pending at the same time concerning similar contests provided for in this chapter, such appeals shall be consolidated and tried together.

History: En. Sec. 59, Ch. 146, L. 1909; re-en. Sec. 7254, R.C.M. 1921; re-en. Sec. 7254, R.C.M. 1935; R.C.M. 1947, 89-2101.

85-7-2203. Procedure on appeal. The court hearing any of the contests or proceedings herein provided for shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by Title 25 which are not inconsistent with the provisions of this chapter are applicable to all actions or proceedings herein provided for. The costs of any such hearing or contest may be allowed and apportioned between the parties or taxed to the losing parties, in the discretion of the court.

History: En. Sec. 60, Ch. 146, L. 1909; re-en. Sec. 7255, R.C.M. 1921; re-en. Sec. 7255, R.C.M. 1935; R.C.M. 1947, 89-2102.

85-7-2204. Written consent of owners — acknowledgment and recording requirements. Whenever any written consent is required to be given by or obtained from the owner or owners of any lands by any of the provisions of any of the sections of this chapter, such written consent must be acknowledged before some officer authorized to take acknowledgments and shall be filed and recorded in the office of the clerk and recorder of the county in which such lands are situated, and a certified copy thereof must be filed in the office of the clerk of the court in the county in which the proceedings for the organization of such district were instituted. The provisions of this section shall not apply to any petition provided for by this chapter, and all such petitions may be signed in any number of original parts with the same effect as though all signatures had been affixed to one instrument.

History: En. Sec. 64, Ch. 146, L. 1909; re-en. Sec. 7259, R.C.M. 1921; re-en. Sec. 7259, R.C.M. 1935; R.C.M. 1947, 89-2106; amd. Sec. 6, Ch. 326, L. 1979.

CHAPTER 8

DRAINAGE DISTRICTS

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Part 1

Creation of Districts

85-8-101. Petition for creation of district. (1) Whenever a majority of the owners of lands within any district of land who shall represent one-third in area of the land within said district to be reclaimed or benefited or whenever the owners of more than one-half of the lands within such district desire to construct one or more drains, ditches, levees, waste ditches, or other works across the lands of others or to straighten, widen, deepen, or otherwise alter any natural stream or watercourse not navigable, for the promotion of the public health or welfare and the drainage of the lands and removal of surface waters therefrom; or desire to maintain and keep in repair any such drain, ditch, or levee heretofore constructed under any law of this state, such owners may file, in the district court of any county in which the lands or any part of them shall lie, a petition setting forth:

(a) the proposed name of the drainage district;

(b) the necessity of the proposed work;

(c) a general description of the proposed starting points, routes, and termini of the proposed drain, ditches, and levees;

(d) a general description of the lands proposed to be included in the district;

(e) the names of the owners of all lands in the district, when known.

(2) If the purpose of the petitioners is the enlargement, repair, and maintenance of a ditch, levee, or other work heretofore constructed under any law of this state, the petition shall give a general description of the same, with such particulars as are considered important. The petition shall pray for the organization of a drainage district by the name and with the boundaries proposed and for the appointment of commissioners for the execution of such proposed work, according to the provisions of this and the following sections.

(3) (a) Any lands, the title to which is in the state and which are within the boundaries of any drainage district heretofore created or which may be hereafter created, may be included in any such drainage district in the same manner as is by law provided for adding other lands to drainage districts whenever it is found necessary to include lands in drainage districts as provided by the preceding subsections.

(b) All copies of petitions or notices required by law to be served on account of such lands being included in such drainage districts shall be served on the president of the board having control of such lands in the same manner as is hereinafter provided for the service of petitions and notices on other owners of lands in the district in which said lands are situated.

History: En. Sec. 1, Ch. 129, L. 1921; re-en. Sec. 7265, R.C.M. 1921; re-en. Sec. 7265, R.C.M. 1935; R.C.M. 1947, 89-2201; amd. Sec. 7, Ch. 326, L. 1979.

85-8-102. Amendment and circulation of petition — court consideration. No petition having as many signers as are required by 85-8-101 may be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated and, when filed, together shall be regarded as one petition having as many signers as there are separate signers on the several filed petitions who own lands within the proposed drainage district. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the court the same as if filed with the first petitions placed on file, and the signatures thereon shall be counted in determining whether sufficient landowners have signed the petition.

History: En. Sec. 2, Ch. 129, L. 1921; re-en. Sec. 7266, R.C.M. 1921; re-en. Sec. 7266, R.C.M. 1935; amd. Sec. 40, Ch. 460, L. 1977; R.C.M. 1947, 89-2203; amd. Sec. 8, Ch. 326, L. 1979.

85-8-103. Territory to be included. Said territory need not be contiguous, provided that it be so situated that the public health or welfare will be promoted by such drainage of each part thereof, the benefits of the proposed work in each part will exceed the damages from the costs of said proposed work in each part, and the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise.

History: En. Sec. 3, Ch. 129, L. 1921; re-en. Sec. 7267, R.C.M. 1921; re-en. Sec. 7267, R.C.M. 1935; R.C.M. 1947, 89-2204.

85-8-104 through 85-8-110 reserved.

85-8-111. Notice of hearing. (1) On such petition being filed, the court or judge thereof shall make an order fixing a time and place of hearing thereon and ordering notice. Thereupon, the clerk of said court for the county in which the proceedings are instituted shall cause 20 days' notice of the filing of such petition to be given:

(a) by posting notice thereof in at least five of the most public places in the proposed district in which said work is to be done;

(b) by serving or causing to be served a copy of such notice on each owner of land within said proposed district residing in any county in which any lands in said proposed district are situated, either personally or by leaving a copy thereof at his last usual place of abode with a person of suitable age and discretion, to whom its contents shall be explained; and

(c) by publishing a copy thereof at least once a week for 3 successive weeks in some newspaper published in each county from which any part of the district is proposed to be taken. If there be no newspaper in any such county, such notice may be published in a newspaper published in an adjoining county.

(2) Such notice shall:

(a) state in what court said petition is filed;

(b) state briefly the starting points, routes, and termini of said drains, ditches, and levees;

(c) give a general description of the proposed work;

(d) give the proposed boundaries of said district (or a general description of all the lands in said proposed district);

(e) give the name proposed for said drainage district; and

(f) state the time and place fixed by the court when and where the petitioners will ask a hearing on said petition.

History: En. Sec. 4, Ch. 129, L. 1921; re-en. Sec. 7268, R.C.M. 1921; re-en. Sec. 7268, R.C.M. 1935; R.C.M. 1947, 89-2205.

85-8-112. Affidavit in case of nonresident petitioners. If any of the owners of land in said district are nonresidents of the county or counties in which the proposed district lies, the petition shall be accompanied by an affidavit giving the names and post-office addresses of such nonresidents, if such are known, and if unknown, shall state that upon diligent inquiry their names or post-office addresses (whichever may be the fact) cannot be ascertained. The clerk of the court shall mail a copy of the notice aforesaid to each of said nonresident owners whose post-office address is known, within 6 days after the first publication of the same.

History: En. Sec. 5, Ch. 129, L. 1921; re-en. Sec. 7269, R.C.M. 1921; re-en. Sec. 7269, R.C.M. 1935; R.C.M. 1947, 89-2206.

85-8-113. Proof of service and publication. The certificate of the clerk of the court or other public officer or the affidavit of any other person who knows the facts, affixed to a copy of said notice, shall be sufficient evidence of the posting, serving, mailing, or publication thereof.

History: En. Sec. 6, Ch. 129, L. 1921; re-en. Sec. 7270, R.C.M. 1921; re-en. Sec. 7270, R.C.M. 1935; R.C.M. 1947, 89-2207.

85-8-114. Personal service of notice to confer jurisdiction. Personal service of such notice on (or service by leaving at the last usual place of abode of) all owners of lands or easements or interest in lands within said district shall give the court complete jurisdiction, without posting, publication, or mailing of said notice.

History: En. Sec. 7, Ch. 129, L. 1921; re-en. Sec. 7271, R.C.M. 1921; re-en. Sec. 7271, R.C.M. 1935; R.C.M. 1947, 89-2208.

85-8-115. Insufficient service. (1) If it shall be found, before the hearing on a petition for the organization of a drainage district, that one or more owners of land in said district have not been duly served with notice of hearing on said petition, the court or presiding judge shall not thereby lose jurisdiction. The court or presiding judge in such case shall adjourn the hearing, make an order directing the serving of said notice upon said landowner, and fix the time and manner of service of such notice, which notice shall notify him to appear at said adjourned time and place and be heard on said petition.

(2) Said notice shall be served personally or by leaving at the last usual place of abode of said unserved owners as provided in 85-8-111, not less than 8 days before said adjourned hearing, or published, not less than 14 days before said adjourned hearing, in some newspaper published in the county in which said owners' lands lie or, if no newspaper be published in said county, then in some newspaper published in an adjoining county.

History: En. Secs. 8, 9, Ch. 129, L. 1921; re-en. Secs. 7272, 7273, R.C.M. 1921; re-en. Secs. 7272, 7273, R.C.M. 1935; R.C.M. 1947, 89-2209, 89-2210.

85-8-116. Procedure on adjourned day. Upon the adjourned day the same proceedings, adjournments, trial findings, and orders may be had as in case of complete service of notice in the first instance. In case of failure to mail said notice as herein required, the court or judge may order the same mailed later and shall adjourn said hearing so that said notice shall be mailed at least 14 days before said adjourned hearing. In case of failure to publish or post notice as required in this part, the court or judge may adjourn said hearing for sufficient time to permit the due posting and publication of said notice and order said notice posted or published as directed in 85-8-111. In case of adjournment to permit notice to be given, the notice shall state the fact of such adjournment and the time and place of hearing pursuant to said adjournment.

History: En. Sec. 10, Ch. 129, L. 1921; re-en. Sec. 7274, R.C.M. 1921; re-en. Sec. 7274, R.C.M. 1935; R.C.M. 1947, 89-2211.

85-8-117. Contest by landowners. (1) On the day fixed for hearing on such petition, all parties owning lands or any interest or easement in land within said proposed district or who would be affected thereby may appear and contest:

(a) the sufficiency of the petition;
(b) the sufficiency of the signers of the petition;
(c) the sufficiency of the notice;
(d) the constitutionality of the law; and
(e) the jurisdiction of the court, specifying their objections to such jurisdiction.

(2) The petitioners and contestants may, on the trial, offer any competent evidence in regard thereto. All notices of contest shall be in writing and shall clearly specify the grounds of contest.

History: En. Sec. 11, Ch. 129, L. 1921; re-en. Sec. 7275, R.C.M. 1921; re-en. Sec. 7275, R.C.M. 1935; R.C.M. 1947, 89-2212.

85-8-118. Determination of sufficiency of petition. The court shall hear and determine whether or not the petition contains the signatures of a majority of the owners of lands within the proposed district who are of lawful age and who represent one-third in area of the lands proposed to be affected by said work or the signatures of the owners of more than one-half of such lands and shall determine all questions of law arising on said contest. The district court in which such petition shall be filed or the judge thereof may adjourn the hearing on the petition from time to time for want of sufficient notice, to give time to prepare for trial, or for other good cause.

History: En. Sec. 12, Ch. 129, L. 1921; re-en. Sec. 7276, R.C.M. 1921; re-en. Sec. 7276, R.C.M. 1935; R.C.M. 1947, 89-2213; amd. Sec. 9, Ch. 326, L. 1979.

85-8-119. Receiving affidavits on question of petition sufficiency. The affidavits of any 10 or more of the signers of the petition, stating that they have examined it and are acquainted with the locality of the district and that the petition is signed by a sufficient number of owners of lands in the district to satisfy 85-8-101, may be taken by the court or judge as prima facie evidence of the facts therein stated. The affidavit of any petitioner or other landowner before the court or represented before the court asserting his ownership of lands in the district, properly described, is sufficient evidence to the court of such facts.

History: En. Sec. 13, Ch. 129, L. 1921; re-en. Sec. 7277, R.C.M. 1921; re-en. Sec. 7277, R.C.M. 1935; R.C.M. 1947, 89-2214; amd. Sec. 10, Ch. 326, L. 1979.

85-8-120. Fraudulent deeds. All deeds made for the purpose of establishing or defeating the prayer of said petition and not made in good faith and for a valuable consideration shall be taken and held to be a fraud, and the holders thereof shall not be considered as the owners of the lands described therein.

History: En. Sec. 14, Ch. 129, L. 1921; re-en. Sec. 7278, R.C.M. 1921; re-en. Sec. 7278, R.C.M. 1935; R.C.M. 1947, 89-2215.

85-8-121. Court determination. (1) If the court or presiding judge thereof, after hearing any and all competent evidence that may be offered for and against the petition, shall find that the same has not been signed as herein required, the petition shall be dismissed at the cost of the petitioners and judgment shall be entered against said petitioners for the amount of said costs.

(2) If it shall appear that the petition has been so signed, the court or judge shall so find and order any necessary amendments thereto; shall divide

the district into three divisions, as nearly equal in area as possible; and shall appoint three suitable and competent persons as commissioners and fix their temporary bonds. In making such appointments one commissioner shall be appointed from each division, and each person so appointed a commissioner must be an actual landowner and resident of the county or counties in the division for which he is appointed such commissioner. If the district is situated in two or more counties, not more than two of said commissioners shall reside in one of said counties. Ownership of land within the district shall not disqualify a person from acting as a commissioner.

History: (1)En. Sec. 15, Ch. 129, L. 1921; re-en. Sec. 7279, R.C.M. 1921; re-en. Sec. 7279, R.C.M. 1935; Sec. 89-2216, R.C.M. 1947; (2)En. Sec. 16, Ch. 129, L. 1921; re-en. Sec. 7280, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1925; re-en. Sec. 7280, R.C.M. 1935; Sec. 89-2217, R.C.M. 1947; R.C.M. 1947, 89-2216, 89-2217(part).

Part 2

Dissolution of Districts

85-8-201. Dissolution of districts. Whenever the owners of more than one-half of the lands within any drainage district organized under the provisions of this chapter shall present to the district court having jurisdiction of the drainage district a petition signed by them, praying that such drainage district be dissolved, the judge of the court shall cause notice of such petition, together with a copy of the petition, to be served upon the commissioners of the district, directing them to show cause on a day certain, not less than 15 or more than 30 days from the date of the filing of the petition, why the petition should not be granted. The judge, at the time of receiving the petition, shall make an order forbidding the commissioners from incurring any further expense or proceeding with the work of constructing a drain. On the day of hearing the court shall hear the same, and if it appears that the owners of more than one-half of the lands in the drainage district have signed the petition, it shall be granted. Thereupon, the court shall make an order directing the commissioners to file a written report, under oath, setting forth the amount of the debts and obligations of the drainage district. Within 30 days after such report is filed, the court shall cause an assessment to be levied against all lands in the district on the basis of the final report of the commissioners, as confirmed by the court, and if no final report has been made, then on an area basis. The court shall also enter judgment dissolving the district and authorize the commissioners to settle the business of the district on the basis of the final report of the commissioners or on the area basis as confirmed by this court, the commissioners to render their services for same without pay.

History: En. Sec. 7265-A by Sec. 1, Ch. 46, L. 1925; re-en. Sec. 7265.1, R.C.M. 1935; R.C.M. 1947, 89-2202; amd. Sec. 11, Ch. 326, L. 1979.

Part 3

Organization and Operation

85-8-301. Term of commissioners at creation of district. On the creation of a district the commissioners appointed by the judge or court shall hold office until the first Tuesday in May following their appointment and until their successors are elected. When a district is in existence on March 1, 1921, and thereafter an order is made dividing such district into divisions, the terms of office of such commissioners shall cease with the Monday immediately preceding the first Tuesday in May next following.

History: En. Sec. 18, Ch. 129, L. 1921; re-en. Sec. 7282, R.C.M. 1921; amd. Sec. 2, Ch. 50, L. 1925; re-en. Sec. 7282, R.C.M. 1935; R.C.M. 1947, 89-2301.

85-8-302. Election of commissioners — regular term of office. (1) The regular election of commissioners shall be held annually in accordance with 13-1-104. The term of office of commissioners shall commence on the first Monday in January following their election. At the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and which, on petition, have been divided into divisions, at the first regular election following the date of the order making such division, there shall be elected three commissioners, one commissioner being elected from each division of which he must be an actual landowner. One of the commissioners, to be determined by lot, shall hold office until the first Monday in January in the year following his election; another of the commissioners, to be determined by lot, shall hold office until the first Monday in January in the second year following his election; and the third of the commissioners shall hold office until the first Monday in January in the third year following his election. Thereafter one commissioner shall be elected each year, who shall hold office for a term of 3 years and until his successor is elected and qualified. The person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whom he is to succeed.

(2) Each commissioner must be a resident of a county where a portion of the district lands is situated.

History: En. Sec. 19, Ch. 129, L. 1921; re-en. Sec. 7283, R.C.M. 1921; amd. Sec. 3, Ch. 50, L. 1925; re-en. Sec. 7283, R.C.M. 1935; amd. Sec. 41, Ch. 460, L. 1977; R.C.M. 1947, 89-2302; amd. Sec. 400, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

85-8-303. Notice of election. Forty days before any regular election, the secretary of the board of commissioners shall give notice by mail to all landowners within the district of the time and place of holding the election.

History: En. Sec. 7283A by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.1, R.C.M. 1935; R.C.M. 1947, 89-2303; amd. Sec. 401, Ch. 571, L. 1979.

85-8-304. Results of election. The clerk of the board of directors shall enter the result of the election in the minutes of the board and file with the clerk of the district court creating the district a statement showing the names of the persons elected as commissioners, the names of the commissioners whose term will expire on the first Monday in January following, and the names of all of the persons who will compose the board of directors for the year next following the first Monday in January.

History: En. Sec. 7283B by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.2, R.C.M. 1935; R.C.M. 1947, 89-2304; amd. Sec. 1, Ch. 171, L. 1979; amd. Sec. 402, Ch. 571, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 171 and Ch. 571, L. 1979, and a composite section has been prepared by the Code Commissioner, 1979. Ch. 171 extended the closing time for the polls to 8 p.m., while Ch. 571 rewrote the section as part of a general revision of the election laws. Under this revision, drainage district elections are subject to the general election laws, including a provision for polls remaining open until 8 p.m. Consequently the language in Ch. 171, which is covered in 13-1-106, is not incorporated into the composite.

85-8-305. Qualifications of electors. (1) At all such elections, except as herein otherwise expressly provided, the following persons holding title or evidence of title to lands within the district shall be entitled to vote:

(a) all of the persons having the qualifications of electors under the constitution and general laws of the state;

(b) guardians, administrators, executors, and trustees residing in the state;

(c) domestic corporations by their duly authorized agents.

(2) In all elections each elector shall be permitted to cast one vote for each 40 acres of land or major fraction thereof in the district owned by such elector, but any elector owning 20 acres or less shall be entitled to one vote.

History: En. Sec. 7283C by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.3, R.C.M. 1935; R.C.M. 1947, 89-2305.

85-8-306. Nominations. Candidates for the office of commissioner to be filled by election under the provisions of this part may be nominated by petition filed with the county election administrator and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote. Nothing herein contained shall prevent an elector from voting for any qualified person, although the name does not appear on the official ballot.

History: En. Sec. 7283D by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.4, R.C.M. 1935; R.C.M. 1947, 89-2306; amd. Sec. 403, Ch. 571, L. 1979.

85-8-307. Vacancies. If a vacancy occurs in the board of commissioners, the remaining members of the board shall elect some qualified elector to fill such vacancy, and the person so elected shall hold such office for the unexpired term and until his successor is elected and qualified. The person so appointed must be appointed as a commissioner for the division in which such vacancy exists. In the event there is a vacancy or vacancies in the board of commissioners by reason of no appointment being made, due to the failure of the remaining members of the board to act or on account of no election being held, then, in that event, the judge of the court having jurisdiction over said drainage district shall, upon the receipt of a petition signed by 10% of the resident owners of land in said district, appoint to such vacancy or vacancies such person as the aforesaid petition may designate.

History: En. Sec. 20, Ch. 129, L. 1921; re-en. Sec. 7284, R.C.M. 1921; amd. Sec. 5, Ch. 50, L. 1925; amd. Sec. 1, Ch. 169, L. 1929; re-en. Sec. 7284, R.C.M. 1935; R.C.M. 1947, 89-2307.

85-8-308. Oath and bond of commissioners — quorum. (1) Before entering upon their duties such commissioners shall:

(a) take and subscribe an oath to support The Constitution of the United States and The Constitution of the State of Montana, to faithfully and impartially discharge their duties as such commissioners, and to render a true account of their doings to the court by which they are appointed, whenever required by law or the order of the court; and

(b) execute a bond running to the clerk of said court and his successors in office as obligees, to be filed with said clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as such commissioners and the faithful accounting for and application of all moneys which shall come into their hands as such commissioners.

(2) A majority shall constitute a quorum, and a concurrence of a majority in any matter within their duties shall be sufficient to its determination.

History: En. Sec. 17, Ch. 129, L. 1921; re-en. Sec. 7281, R.C.M. 1921; re-en. Sec. 7281, R.C.M. 1935; R.C.M. 1947, 89-2218.

85-8-309 and 85-8-310 reserved.

85-8-311. Record and vouchers. The commissioners shall keep an accurate record of all moneys collected on account of the work under their charge and of all payments made by them; shall take vouchers for such payments; and shall keep full, accurate, and true minutes of all their proceedings.

History: En. Sec. 21, Ch. 129, L. 1921; re-en. Sec. 7285, R.C.M. 1921; re-en. Sec. 7285, R.C.M. 1935; R.C.M. 1947, 89-2308.

85-8-312. Custody of funds. The county treasurer of the county wherein the court having jurisdiction of such district is located shall be the custodian of all funds belonging to the district, and he shall pay out such funds upon warrants drawn by the board of commissioners of such district, except that the bonds of said district and the interest coupons thereon shall be payable as they mature, on presentation to such treasurer.

History: En. Sec. 22, Ch. 129, L. 1921; re-en. Sec. 7286, R.C.M. 1921; re-en. Sec. 7286, R.C.M. 1935; R.C.M. 1947, 89-2309.

85-8-313. Annual report of commissioners. On the first Tuesday of July of each year the commissioners shall file in the office of the clerk of the court having jurisdiction in the matter an itemized statement of all their receipts and disbursements and leave said report in such office for examination by parties interested at all times.

History: En. Sec. 23, Ch. 129, L. 1921; re-en. Sec. 7287, R.C.M. 1921; re-en. Sec. 7287, R.C.M. 1935; R.C.M.1947, 89-2310.

85-8-314. Court control and compensation of commissioners. (1) The commissioners shall receive for their services such compensation as the court or presiding judge thereof may determine. They shall also receive their actual reasonable expenses. They shall at all times be under the control or direction of the court or presiding judge and shall obey its or his directions; for failure to do so they shall forfeit their compensation and be dealt with summarily as for contempt. Suit may also be brought upon their bonds, in the name of the clerk of the court, and the amount recovered shall be applied to the construction of the work or to the party injured, as justice may require.

(2) The court may at any time require the commissioners to make a report on any matter or matters connected with their duties as commissioners and after due hearing may remove from office any or all of said commissioners for neglect of duty, malfeasance in office, or for other good cause. The court may at any time require the commissioners to give new bonds to the clerk of the court and may fix the amount thereof. Said bonds shall be submitted to the court or the presiding judge thereof for approval.

History: (1)En. Secs. 24, 25, 26, Ch. 129, L. 1921; re-en. Secs. 7288, 7289, 7290, R.C.M. 1921; re-en. Secs. 7288, 7289, 7290, R.C.M. 1935; Secs. 89-2311, 89-2312, 89-2313, R.C.M. 1947; (2)En. Sec. 92, Ch. 129, L. 1921; re-en. Sec. 7356, R.C.M. 1921; re-en. Sec. 7356, R.C.M. 1935; Sec. 89-2812, R.C.M. 1947; R.C.M. 1947, 89-2311, 89-2312, 89-2313, 89-2812.

85-8-315. Presumption of regularity of commissioners' acts. Commissioners of drainage districts are hereby declared to be public officers. The presumption shall be in favor of the regularity and validity of all their official acts. Whenever any report of the commissioners of any drainage district or any part of any such report is contested, remonstrated against, or called in question, the burden of proof shall rest upon the contestant, remonstrant, or questioner.

History: En. Sec. 95, Ch. 129, L. 1921; re-en. Sec. 7359, R.C.M. 1921; re-en. Sec. 7359, R.C.M. 1935; R.C.M. 1947, 89-2815.

85-8-316 through 85-8-320 reserved.

85-8-321. Organization, appointments, and preliminary report. (1) Within 10 days after said commissioners shall be appointed and qualified, they shall meet and organize by electing one of their number president and a secretary, who may or may not be one of their number.

(2) They shall appoint one or more attorneys to assist in the establishment of the district; advise with its officers, agents, and employees; and prepare reports and other necessary documents. The court shall allow such attorney or attorneys just compensation to be taxed in the case.

(3) They shall also appoint a competent civil and drainage engineer, who may be an individual, a partnership, or a corporation, who may employ assistants and make surveys; and who, with the approval of the court, may employ a consulting engineer or secure expert advice. The expense of the engineer, his assistants, and the consulting engineer shall be taxed as expenses under the petition. As soon thereafter as may be, they shall personally examine the lands in said district and make a preliminary report to the court, which report shall state:

(a) whether said proposed work is necessary or would be of utility in carrying out the purposes of the petition;

(b) whether the proposed work would promote the public health;

(c) whether the proposed work would promote the public welfare;

(d) whether the total benefits from said proposed work will exceed the cost thereof, together with the damages resulting therefrom, and in arriving at this, they shall include all benefits and all damages resulting therefrom both within and without said district.

(4) Said commissioners shall in said report fix, as near as may be, and report to the court the boundaries of said proposed drainage district. Said boundaries shall not be changed from those in the petition described so as to deprive the court of jurisdiction by reason of not having on the petition the required number of signers owning land within said changed boundaries.

History: En. Sec. 27, Ch. 129, L. 1921; re-en. Sec. 7291, R.C.M. 1921; re-en. Sec. 7291, R.C.M. 1935; R.C.M. 1947, 89-2314.

85-8-322. Adoption of feasible plan. If said proposed work, as described in the petition, is not best suited to carry out the purposes of the petition, the commissioners shall consider and base their report upon the one best suited to carry out those purposes and propose to the court the one considered by them.

History: En. Sec. 28, Ch. 129, L. 1921; re-en. Sec. 7292, R.C.M. 1921; re-en. Sec. 7292, R.C.M. 1935; R.C.M. 1947, 89-2315.

85-8-323. Hearing and notice on preliminary report. Upon the filing of the preliminary report the court or the presiding judge thereof shall by order fix a time and place when and where the same shall be heard at some general or special term of said court, not less than 30 days from the filing of said report. Notice of the time and place of hearing upon said preliminary report shall be given to all interested persons by publishing a brief notice of the filing of said report, including a brief statement of the substance of said report, in one or more newspapers published in each county in which any land in said proposed drainage district shall be situated (or, if no newspaper is published in said county, in one or more newspapers in an adjoining county) once in each week for 3 successive weeks prior to the day appointed for hearing thereon. Said notice shall:

(1) describe all lands included by said report in said district which were not included therein by the petition and state that such lands are to be included in said district; and

(2) describe all lands excluded from said district which were by the petition included therein and shall state that such lands are to be excluded from said district.

History: En. Sec. 29, Ch. 129, L. 1921; re-en. Sec. 7293, R.C.M. 1921; re-en. Sec. 7293, R.C.M. 1935; R.C.M. 1947, 89-2316.

85-8-324. Adjournment of hearing or trial of issues. Upon the day fixed for hearing upon said report, said court may adjourn said hearing for good cause or may proceed to hear, try, and determine all issues arising upon said report.

History: En. Sec. 30, Ch. 129, L. 1921; re-en. Sec. 7294, R.C.M. 1921; re-en. Sec. 7294, R.C.M. 1935; R.C.M. 1947, 89-2317.

85-8-325. Remonstrance by interested parties. Any interested party may appear and remonstrate against said report or any material part thereof. All remonstrances shall be in writing, be verified on oath, be filed at least 5 days before the day fixed for hearing, and shall set forth the facts upon which they are based.

History: En. Sec. 31, Ch. 129, L. 1921; re-en. Sec. 7295, R.C.M. 1921; re-en. Sec. 7295, R.C.M. 1935; R.C.M. 1947, 89-2318.

85-8-326. Service of owners of added lands. When lands are added to the district, the owners thereof shall be served with said notice as provided for serving of notice of hearing on the petition.

History: En. Sec. 32, Ch. 129, L. 1921; re-en. Sec. 7296, R.C.M. 1921; re-en. Sec. 7296, R.C.M. 1935; R.C.M. 1947, 89-2319.

85-8-327. Procedure at court hearing and order. (1) All issues arising upon said preliminary report shall be tried by the court without a jury.

(2) If the court shall find in favor of the remonstrance or if said report be that the proposed work will not promote the public health and will not promote the public welfare or that the benefits from said proposed work will not exceed the damages and cost of construction and no remonstrance against said report is filed, the petition shall be dismissed, the costs taxed against the petitioners, and judgment entered therefor, as provided in 85-8-350.

(3) If the preliminary report be that the benefits of said proposed work (or work proposed by the commissioners) will exceed the damages and the cost of construction and that the public health will be promoted thereby or that the public welfare will be promoted thereby and no remonstrance thereto is filed or if on the trial of the issues made on said report the court finds that the benefits will exceed the damages and cost of construction and that the public health or the public welfare will be promoted by said proposed work, the court shall make and file such findings in writing and make an order confirming said report or directing amendment of the report to conform to the findings of said court, and when so amended the court shall by order confirm the same and direct said commissioners to proceed with said work with all convenient speed.

(4) Such findings and order shall be final and conclusive unless appealed from to the supreme court within 30 days after filing thereof.

History: En. Secs. 33, 34, 35, Ch. 129, L. 1921; re-en. Secs. 7297, 7298, 7299, R.C.M. 1921; re-en. Secs. 7297, 7298, 7299, R.C.M. 1935; R.C.M. 1947, 89-2320, 89-2321, 89-2322.

85-8-328. Corporate nature of drainage district. (1) Upon entering of such order of confirmation of said preliminary report of record, such drainage district shall be and is thereby declared to be organized as a drainage district, by the name mentioned in said petition or such other name as the court shall fix, with the boundaries fixed by the order confirming the report of said commissioners, to be a body corporate, by said name fixed in said order, with the right to sue and be sued, to adopt and use a seal, and to have perpetual succession.

(2) The commissioners appointed as aforesaid and their successors in office shall, from the entry of such order of confirmation, constitute the corporate authority of said drainage district, exercise the functions conferred on them by law, and do all things and perform all acts necessary to the construction and preservation of the proposed work.

History: En. Secs. 36, 37, Ch. 129, L. 1921; re-en. Secs. 7300, 7301, R.C.M. 1921; re-en. Secs. 7300, 7301, R.C.M. 1935; R.C.M. 1947, 89-2323, 89-2324.

85-8-329. Necessity of preliminary proceedings. All proceedings herein required, prior to the entry of such order of confirmation of record, shall be deemed to be and are hereby declared to be necessary to the formation of said body corporate.

History: En. Sec. 38, Ch. 129, L. 1921; re-en. Sec. 7302, R.C.M. 1921; re-en. Sec. 7302, R.C.M. 1935; R.C.M. 1947, 89-2325.

85-8-330 through 85-8-340 reserved.

85-8-341. Preparation of report — contents. (1) As soon as may be after the confirmation of the preliminary report or within such time as the court may direct, said commissioners shall proceed to have all necessary levels taken and surveys made and shall lay out said proposed work; make a map thereof and plans, profiles, and other specifications thereof; and report in writing to the court:

(a) whether the starting points, routes, and termini of the proposed work and the proposed location thereof as contained in the petition are in all respects proper and feasible and, if not, shall report such as are most proper and feasible;

(b) if it be found necessary to change the boundaries of said proposed district, as fixed by them previously, they shall report said proposed change and, if possible, shall report the names, residence, and post-office addresses of the owner or owners of all lands affected by said change in boundaries, but no such change in boundaries shall be made as to deprive the court of jurisdiction; provided, however, that if the owners of lands adjacent to the district petition to have their lands brought into the district such may be considered the same as original petitioners in making changes of boundaries;

(c) what lands within the district, as reported by them, will be injured by the proposed work, if any, and they shall therein award to each tract, lot, easement, or interest, by whomsoever held, the amount of damages which they shall determine will be caused to the same by the proposed work;

(d) what lands (including improvements when improvements receive benefits), easements, irrigation ditches, cities, towns, counties, individuals, and other corporations and persons should be assessed for the payment of any part of the cost of constructing the proposed drains, levees, or other facilities, repairs thereto, maintenance thereof, and the incidental expenses attached to the establishment of such drainage district;

(e) the total amount, as near as they can determine, that said proposed work will cost, which cost shall include all incidental expenses, the reasonable cost of organizing said district, the costs of proceeding and all probable damage to lands, both within and without the district, together with a reasonable attorney fee for the petitioners, which cost will hereinafter be referred to as cost of construction.

(2) If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts, lot or lots of land, including improvements where the same are benefited or upon any corporation or corporations, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts, lots, and corporations and assess such sum against said tracts, lots, and corporations.

(3) If any individual, association of individuals, or corporation would, in the judgment of said commissioners, derive special benefits from the whole

or any part of such proposed work, the commissioners shall so report and assess those benefits and assess against the recipient thereof its proportionate share of the costs of said proposed work. The word "corporation", whenever contained in this chapter, shall be construed to include:

(a) railroad companies;
(b) other private and quasi-public corporations of all kinds;
(c) towns;
(d) cities;
(e) villages;
(f) other drainage districts; and
(g) counties.

(4) They shall apportion and assess the part of this cost of construction, not assessed as above, against the several benefited tracts, lots (including improvements when the same are benefited), and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot, or easement the sum which they assess against the same for construction. The assessments which together make up the cost of construction, as above defined, are herein referred to as assessments for construction.

(5) The commissioners shall further report to the court the probable cost of keeping said proposed work in repair after it is completed.

(6) They shall include in their report said map, plans, and other specifications and file the same with their report.

History: (1)(a) thru (1)(c)En. Secs. 39, 40, 41, 42, Ch. 129, L. 1921; re-en. Secs. 7303, 7304, 7305, 7306, R.C.M. 1921; re-en. Secs. 7303, 7304, 7305, 7306, R.C.M. 1935; Secs. 89-2326, 89-2327, 89-2328, 89-2329, R.C.M. 1947; (1)(d)En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R.C.M. 1921; amd. Sec. 2, Ch. 169, L. 1929; re-en. Sec. 7307, R.C.M. 1935; amd. Sec. 1, Ch. 409, L. 1973; Sec. 89-2330, R.C.M. 1947; (1)(e)En. Sec. 44, Ch. 129, L. 1921; re-en. Sec. 7308, R.C.M. 1921; re-en. Sec. 7308, R.C.M. 1935; Sec. 89-2331, R.C.M. 1947; (2)En. Sec. 45, Ch. 129, L. 1921; re-en. Sec. 7309, R.C.M. 1921; re-en. Sec. 7309, R.C.M. 1935; amd. Sec. 2, Ch. 409, L. 1973; Sec. 89-2332, R.C.M. 1947; (3)En. Sec. 46, Ch. 129, L. 1921; re-en. Sec. 7310, R.C.M. 1921; re-en. Sec. 7310, R.C.M. 1935; amd. Sec. 3, Ch. 409, L. 1973; Sec. 89-2333, R.C.M. 1947; (4)En. Sec. 47, Ch. 129, L. 1921; re-en. Sec. 7311, R.C.M. 1921; re-en. Sec. 7311, R.C.M. 1935; amd. Sec. 4, Ch. 409, L. 1973; Sec. 89-2334, R.C.M. 1947; (5)En. Sec. 48, Ch. 129, L. 1921; re-en. Sec. 7312, R.C.M. 1921; re-en. Sec. 7312, R.C.M. 1935; Sec. 89-2335, R.C.M. 1947; (6)En. Sec. 49, Ch. 129, L. 1921; re-en. Sec. 7313, R.C.M. 1921; re-en. Sec. 7313, R.C.M. 1935; Sec. 89-2336, R.C.M. 1947; R.C.M. 1947, 89-2326, 89-2327, 89-2328, 89-2329, 89-2330(part), 89-2331, 89-2332, 89-2333, 89-2334, 89-2335, 89-2336.

85-8-342. Apportionment of costs. (1) In apportioning the costs and expenses mentioned in 85-8-341(1)(d), the following classes of property, persons, corporations, and municipalities shall be assessed:

(a) all lands which are swampy, bogged, or waterlogged and will be relieved and improved by virtue of the construction of the proposed drainage system;

(b) all lands which are becoming or are liable to become swampy, bogged, or waterlogged and which the construction of the proposed drainage system will prevent from being thus affected;

(c) all lands from which surface or seepage waters will enter or can be conducted into the proposed drainage system;

(d) all lands and improvements thereto upon which or through which surface or seepage water will be prevented from flowing or can be prevented from flowing by virtue of the construction of the proposed drainage system;

(e) all lands or improvements which will sustain any direct benefit of any kind or character whatsoever;

(f) all railways, whether operated by steam, electricity, or otherwise, whose right-of-way or roadbed will be benefited or can be benefited by reason of the construction of the proposed drainage system or levee project;

(g) all public utilities whose easements or other facilities within the district will receive benefit from the proposed work;

(h) all owners of irrigation ditches or canals included within said district or from which water seeps, drains, or wastes to, upon, or through lands included within the district;

(i) the county or counties which the proposed drainage system traverses or which will be benefited as to public health, convenience, welfare, or improvement of any public highway;

(j) all incorporated cities or towns and lands included within townsites and subdivisions, in whole or in part, directly benefited by reason of the construction of the proposed drainage system.

(2) In apportioning the costs and expenses mentioned in 85-8-341(1)(d), the following principles shall be regarded:

(a) All of the above classes of lands, improvements, railways, public utilities, irrigation ditches, counties, cities, towns, townsites, and subdivisions shall be liable to assessment for the construction of the proposed drainage system in such proportions as may seem just and equitable.

(b) The benefits to accrue from the construction of the proposed drainage system to a railway, county, incorporated city or town, and lands included within a platted townsite or subdivision being of a different character than those to accrue to agricultural lands shall be considered in apportioning the assessment, and also the damages and inconvenience caused by seepage and waste waters from irrigation ditches and from the higher lands shall be considered in apportioning the assessment to them.

(c) In the case of the construction of levees or other flood control facilities, lands and improvements which are located or constructed at an elevation which is greater than the elevation of the design flood level which said levees or other flood control facilities are designed to protect against shall not be assessed for the payment of any part of the cost of constructing the levees or other flood control facilities, nor shall such lands or improvements be assessed for the payment of any part of the cost for repairs thereto, maintenance thereof, or the incidental expenses attached to the establishment of such drainage district.

(d) The assessment against each tract, lot, easement, town, city, county, irrigation ditch, railroad, public utility, individual, or corporation owner thereof which will be benefited by the proposed work or which, in any manner, contributes to the swamped, seeped, bogged, or waterlogged condition of any land within said district and the proportionate share of cost of construction of the proposed drainage system which each of them should bear shall be shown in tabular form, the columns of which shall be headed as follows: Column 1—Owners of property assessed; 2—Description of property assessed; 3—Number of acres assessed; 4—Amount of benefits assessed; 5—Number of acres taken for right-of-way; 6—Value of property taken; 7—Damages; 8—Assessment for costs; which shall be known as the assessment roll. Where property, persons, or corporations, public or private, contribute to the damaged condition of the lands to be reclaimed, it shall not be necessary to assess in such assessment roll the benefits to be derived by or accruing to them.

History: En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R.C.M. 1921; amd. Sec. 2, Ch. 169, L. 1929; re-en. Sec. 7307, R.C.M. 1935; amd. Sec. 1, Ch. 409, L. 1973; R.C.M. 1947, 89-2330(part).

85-8-343. Commissioners to use most feasible plan. The commissioners shall not be confined to the points of commencement, routes, or termini of the drains or ditches or the number, extent, or size of the same or the location, plan, or extent of any levee, ditch, or other work as proposed by the petitioners but shall locate, design, lay out, and plan the same in such manner as to them shall seem best to promote the public health or welfare and to drain or to protect the lands, including improvements, of the parties interested with the least damage and the greatest benefit to all lands affected thereby. Any plan proposed by the commissioners may, on the application of any interested person, on the hearing provided for hereinafter, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

History: En. Sec. 50, Ch. 129, L. 1921; re-en. Sec. 7314, R.C.M. 1921; re-en. Sec. 7314, R.C.M. 1935; amd. Sec. 5, Ch. 409, L. 1973; R.C.M. 1947, 89-2337.

85-8-344. Alteration of boundaries. If the commissioners find that the proposed district, as described in the filed petition, will not embrace all of the lands, including improvements, that will be benefited by the proposed work or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands or improvements, as the case may be, and the boundaries adopted and reported by them, upon the hearing of their report, as hereinafter provided, upon their application or that of any person interested, may be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court.

History: En. Sec. 51, Ch. 129, L. 1921; re-en. Sec. 7315, R.C.M. 1921; re-en. Sec. 7315, R.C.M. 1935; amd. Sec. 6, Ch. 409, L. 1973; R.C.M. 1947, 89-2338.

85-8-345. Notice of hearing of report. (1) Upon the filing of such report, the court shall make an order fixing the time and place when and where all interested persons may appear and remonstrate against the confirmation thereof. The clerk of such court shall cause notice to be given to all parties interested by publication thereof for at least 3 successive weeks before the date of such hearing in at least one newspaper in each county wherein lands located in such district are situate, which notice shall contain a statement of the time and place of the hearing of said report and a brief statement of the substance thereof.

(2) Upon a date not later than the date of the first publication of the notice referred to in the last subsection, the clerk of such court shall also cause to be mailed to each of the persons or corporations recommended by said report to be assessed or whose lands are recommended by said report

to be included in said district, at his or its last known post-office address, a notice containing a brief description of the land or easement belonging to such person or corporation benefited or damaged; the net damage awarded to such tract, parcel, easement, or corporation; and the sum assessed against such benefited parcel, tract, easement, or corporation.

History: En. Secs. 52, 53, Ch. 129, L. 1921; re-en. Secs. 7316, 7317, R.C.M. 1921; re-en. Secs. 7316, 7317, R.C.M. 1935; R.C.M. 1947, 89-2339, 89-2340.

85-8-346. Modification of report. If the court finds that the report requires modification, the same may, by order of the court, be referred back to the commissioners, who may be required to modify it in any respect.

History: En. Sec. 54, Ch. 129, L. 1921; re-en. Sec. 7318, R.C.M. 1921; re-en. Sec. 7318, R.C.M. 1935; R.C.M. 1947, 89-2341.

85-8-347. Confirmation of report — appeals. If there be no remonstrance or if the finding be in favor of the validity of the proceedings or after the report shall have been modified to conform to the findings, the court shall confirm the report. The order of confirmation shall be final and conclusive, the proposed work shall be established and authorized, and the proposed assessments approved and confirmed unless within 30 days an appeal be taken to the supreme court. The said order of confirmation shall also fix the commissioners' bond.

History: En. Sec. 55, Ch. 129, L. 1921; re-en. Sec. 7319, R.C.M. 1921; re-en. Sec. 7319, R.C.M. 1935; R.C.M. 1947, 89-2342.

85-8-348. Modification of court order. Said order of confirmation may, at the same or at any subsequent term of said court, be revised, modified, or changed, in whole or in part, on petition of the commissioners, after such notice to parties adversely interested as the court may require.

History: En. Sec. 56, Ch. 129, L. 1921; re-en. Sec. 7320, R.C.M. 1921; re-en. Sec. 7320, R.C.M. 1935; R.C.M. 1947, 89-2343.

85-8-349. Supplemental report. At any time prior to making the order confirming said report or thereafter, the court may permit the commissioners to present and file a supplemental report or amend their report as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter, make such order as the case may require.

History: En. Sec. 57, Ch. 129, L. 1921; re-en. Sec. 7321, R.C.M. 1921; re-en. Sec. 7321, R.C.M. 1935; R.C.M. 1947, 89-2344.

85-8-350. Judgment on dismissal of proceedings — assessment of costs. (1) In case the petition or proceedings are dismissed as provided in 85-8-327, a judgment shall be entered for the costs, expenses, and liablilities incurred in said proceedings against the petitioners and in favor of the commissioners, but for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings or have recovered costs on successful contests therein.

(2) In case the proceedings are dismissed at any time or the district is discontinued for any cause subsequent to the time provided in subsections

(1) and (2) of 85-8-327, a judgment shall be entered directing the commissioners of the district to assess the costs, expenses, and liabilities incurred in said proceedings, up to and including the time of such dismissal and discontinuation, on an acreage basis against the lands in said district, which assessment shall be a lien upon said lands from the date of said judgment superior to the lien of any other judgment, mortgage, or mechanic's lien against said lands. Said assessment shall be verified by the commissioners of the district the same as assessments to pay costs of construction. Such assessments shall be spread upon the tax rolls of the counties in which said district is situated and shall be collected by the county treasurers of such counties the same as assessments to pay costs of construction are collected. Such assessments shall be payable on or before November 30 following the date upon which they are so spread upon the assessment roll of such counties. The money so collected shall be paid out upon warrants issued by the commissioners of the district to those who have rendered service or advanced money in connection with said district or have recovered costs on successful contests therein. Should such assessment, for any cause, be not sufficient for all such costs, expenses, and liabilities, then additional assessments shall be made and collected in like manner until sufficient funds have been raised to pay all such costs, expenses, and liabilities.

History: En. Sec. 58, Ch. 129, L. 1921; re-en. Sec. 7322, R.C.M. 1921; amd. Sec. 3, Ch. 169, L. 1929; re-en. Sec. 7322, R.C.M. 1935; R.C.M. 1947, 89-2345.

85-8-351. Statement of costs before entry of judgment. Before any such judgment is entered, said commissioners shall file with the clerk of the district court in which said proceedings were instituted an itemized statement of such costs and expenses, duly verified, upon which an order shall issue requiring said petitioners or landowners to show cause before said court, at a time and place named, why judgment should not be entered against said petitioners or landowners for the amount of said costs and expenses. Notice of the hearing of said order to show cause shall be given to said petitioners or landowners by mailing to each a copy thereof, to their last known post-office address, at least 20 days prior to the time set for hearing and by publication of the same in one or more newspapers published in the county where the proceedings are pending at least 3 successive weeks prior to the day set for such hearing. Said notice need not contain an itemized statement of said account.

History: En. Sec. 59, Ch. 129, L. 1921; re-en. Sec. 7323, R.C.M. 1921; amd. Sec. 4, Ch. 169, L. 1929; re-en. Sec. 7323, R.C.M. 1935; R.C.M. 1947, 89-2346.

85-8-352. Contribution among petitioners. All petitioners shall, among themselves, contribute to the payment of said judgment in proportion to the number of acres of land they have within the boundaries of the proposed district at the time of filing of said petition.

History: En. Sec. 60, Ch. 129, L. 1921; re-en. Sec. 7324, R.C.M. 1921; re-en. Sec. 7324, R.C.M. 1935; R.C.M. 1947, 89-2347.

85-8-353 through 85-8-360 reserved.

85-8-361. Contracts. In all cases where the work to be done at any one time under the direction of the commissioners shall, in their opinion, cost to exceed $2,500, the same shall be let to the lowest responsible bidder, and the commissioners shall advertise for sealed bids, by notice published in some newspaper published in the county in which the petition is filed, and may advertise in one or more newspapers published elsewhere. If there be no newspaper published in the county in which the petition is filed, they shall advertise in some newspaper published in an adjoining county, which notice shall particularly set forth the time and place when and where the bids advertised will be opened, the kind of work to be let, and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and shall reserve the right to reject any and all bids.

History: En. Sec. 81, Ch. 129, L. 1921; re-en. Sec. 7345, R.C.M. 1921; re-en. Sec. 7345, R.C.M. 1935; R.C.M. 1947, 89-2801.

85-8-362. Interest of commissioners in contracts forbidden. The commissioners shall not, during their term of office, be interested, directly or indirectly, in any contract for the construction of any drain, ditch, levee, or other work in such drainage district; in the sale of materials therefor; or in the wages of or supplies for men or teams employed on any such work in said district.

History: En. Sec. 82, Ch. 129, L. 1921; re-en. Sec. 7346, R.C.M. 1921; re-en. Sec. 7346, R.C.M. 1935; R.C.M. 1947, 89-2802.

85-8-363. Commissioners' right of entry. The commissioners, their agents, servants, and employees shall have the right to go upon all lands along any drain, ditch, levee, or embankment in their district to inspect, deepen, widen, and repair the same, whenever necessary, doing no unnecessary damage, and shall not be liable for trespass therefor.

History: En. Sec. 70, Ch. 129, L. 1921; re-en. Sec. 7334, R.C.M. 1921; re-en. Sec. 7334, R.C.M. 1935; R.C.M. 1947, 89-2406.

85-8-364. Payment or tender of damages. (1) The damages allowed to the owners of lands shall be paid or tendered before the commissioners shall be authorized to enter upon the lands (for damage to which the award is made) for the construction of any drains, ditches, or levees proposed thereon. If the owner is unknown or there shall be a contest in regard to the ownership of the land or the owner will not receive payment or there exists a mortgage or other lien against the same or the commissioners cannot for any other reason pay him, they may deposit the same damages with the clerk of the court, for the benefit of the owner or parties interested, to be paid or distributed as the court shall direct, and such payment shall have the same effect as the tender to and acceptance of the damages awarded by the true owner of the land.

(2) This section shall not, however, prevent said commissioners, their agents, servants, and employees going upon said lands to do any and all work found necessary prior to making their assessment of benefits and award of damages and the trial on their report thereof.

History: En. Sec. 83, Ch. 129, L. 1921; re-en. Sec. 7347, R.C.M. 1921; re-en. Sec. 7347, R.C.M. 1935; R.C.M. 1947, 89-2803.

85-8-365. Location of drains. When practicable, said drains provided for herein shall be laid out and constructed on the side of public highways or along natural watercourses.

History: En. Sec. 84, Ch. 129, L. 1921; re-en. Sec. 7348, R.C.M. 1921; re-en. Sec. 7348, R.C.M. 1935; R.C.M. 1947, 89-2804.

85-8-366. Drains on railroad lands. (1) Said commissioners shall have the right to lay out and construct all necessary drains, ditches, and levees across any railway right-of-way or yards in their district. Any railway company whose right-of-way or yards cross the line of any proposed drain, ditch, or levee shall open its right-of-way or yards and permit such drain, ditch, or levee to cross the same as soon as said drain, ditch, or levee is constructed to such right-of-way.

(2) Every drainage district shall be liable to the railway company whose right-of-way or yard any of its drains, ditches, or levees cross for the reasonable cost of the culverts and bridges made necessary by said drain, ditch, or levee crossing said right-of-way or yards but not of more expensive character than the average other culverts and bridges on said division of railway crossing streams or ditches of approximately the same width and depth and within 100 miles of said district ditches.

(3) Upon receiving 15 days' notice in writing, any railway company in whose right-of-way or yard any such drain, ditch, or levee is laid out shall open its right-of-way or yards and permit said commissioners and their contractors, agents, and employees to construct said drain, ditch, or levee or to repair, maintain, or clean out same across said right-of-way or yards. For every day after the end of said 15 days that said railroad company fails to open its said right-of-way or yard, as hereinbefore required, it shall forfeit $25 to said drainage district, to be collected in an action, as other forfeitures are collected, or set off against any damages that have been awarded to such company. If said railway company fails to open its right-of-way or yard along the line of said drainage district, drain, ditch, or levee, the commissioners may, at any time after the expiration of said 15 days, open such right-of-way and yard along the line of said drains, ditches, and levees and construct the same.

History: En. Secs. 71, 72, 73, Ch. 129, L. 1921; re-en. Secs. 7335, 7336, 7337, R.C.M. 1921; re-en. Secs. 7335, 7336, 7337, R.C.M. 1935; R.C.M. 1947, 89-2407, 89-2408, 89-2409.

85-8-367. Commissioners' powers during emergency. Commissioners having charge of any completed drain, ditch, levee, or other work constructed under any drainage law of the state of Montana, whether now in force or repealed, shall be authorized, in the case of an emergency, to make such repairs as may be necessary for the preservation and protection of the work under their control.

History: En. Sec. 63, Ch. 129, L. 1921; re-en. Sec. 7327, R.C.M. 1921; amd. Sec. 5, Ch. 169, L. 1929; amd. Sec. 1, Ch. 97, L. 1931; re-en. Sec. 7327, R.C.M. 1935; R.C.M. 1947, 89-2350(part).

85-8-368. Annual report — objections. (1) The commissioners shall, on or before the first Tuesday of March of each year, file with the clerk of court having jurisdiction a report in which they shall specify in detail:

(a) the emergency repairs which they have made during the preceding year;

(b) the labor and repairs then necessary to the preservation and protection of the work under their control;

(c) the places where such labor and repairs are especially needed;

(d) the amount of the outstanding indebtedness of the district; and

(e) the sum to be assessed against each tract, lot, easement, or corporation to pay all emergency repairs theretofore done, necessary labor and repairs to be done during the ensuing year, maintenance, incidental expenses, and interest on and principal of all outstanding indebtedness.

(2) No notice of the filing of such report shall be necessary. All such assessments shall be apportioned on the last assessment roll of drain districts or on the last assessments in drainage districts confirmed by the court having jurisdiction thereof.

(3) Within 30 days after filing such annual report, at a time and place to be fixed by the court or presiding judge, the court or presiding judge shall examine said report, hear all objections to the same, fix and determine the amount of such assessments, and cause such adjudication to be entered of record in said court and a certified copy of the same to be delivered to said commissioners.

History: (1), (2)En. Sec. 63, Ch. 129, L. 1921; re-en. Sec. 7327, R.C.M. 1921; amd. Sec. 5, Ch. 169, L. 1929; amd. Sec. 1, Ch. 97, L. 1931; re-en. Sec. 7327, R.C.M. 1935; Sec. 89-2350, R.C.M. 1947; (3)En. Sec. 64, Ch. 129, L. 1921; re-en. Sec. 7328, R.C.M. 1921; re-en. Sec. 7328, R.C.M. 1935; Sec. 89-2351, R.C.M. 1947; R.C.M. 1947, 89-2350(part), 89-2351.

Part 4

Alteration of District

85-8-401. Alterations or additions to district — petition required. (1) Whenever, in the judgment of the commissioners of any drain district or drainage district, it is necessary or will be beneficial to such district to make any alteration and/or any addition to the drainage system of such district, they shall file a petition with the clerk of the court having jurisdiction of such district, in which shall be stated:

(a) the proposed alteration of and/or the proposed addition to the drainage system of said district;

(b) the necessity therefor; and

(c) the probable cost of making such alteration and/or addition.

(2) Whenever such commissioners shall fail or refuse to file such petition or in event any landowners desire to file such petition, such petition may be filed by such landowners, provided the same be signed by the owners of at least 40% in area of the lands in said district.

History: En. Sec. 7364C by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.3, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1953; R.C.M. 1947, 89-2702.

85-8-402. Hearing — notice and service. Upon the filing of such petition, a judge of said district court shall set the same for hearing and direct the clerk of such court to give notice thereof. Such notice shall contain a concise statement of the proposed alteration and/or addition and the estimated cost thereof, which notice must be served and published at least 20 days before the date fixed for such hearing. Service of such notice shall be made by certified or registered mail, addressed to each landowner and corporation that may be liable for the payment of any portion of the cost of making such alteration and/or addition, at his or its post-office address, if the same can be ascertained by the exercise of due diligence. Such notice shall be published once a week for 20 days prior to such date in some newspaper, to be designated in the order fixing the date for such hearing, published in the county where said court is held; provided, however, that if all interested landowners and corporations are so served, such notice need not be published.

History: En. Sec. 7364D by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.4, R.C.M. 1935; R.C.M. 1947, 89-2703.

85-8-403. Court order — dismissal of petition. (1) Any such landowner or corporation may, at any time prior to 5 days before the date fixed for such hearing, file his or its objections to such petition. A copy of such objections shall be delivered to the attorney for said commissioners, if they have an attorney of record, or to the chairman of the board of commissioners of said district, if there be no such attorney of record, prior to filing the original thereof with the clerk of said court.

(2) If objections are made and filed by the owners of at least 75% in area of the lands in said district, said petition shall be dismissed and no further proceedings had thereon. If the owners of less than 75% in area of the lands in said district object to such petition, then, on the date fixed for such hearing or upon any day to which such hearing may be adjourned, the court having jurisdiction will hear testimony in support of said petition and in opposition thereto.

(3) After such hearing the court shall determine whether the proposed alteration and/or addition is necessary, whether it will be beneficial to said district and improve the drainage system thereof, and either approve or deny such petition or modify and change the proposed alteration and/or addition. If the court shall approve such petition or modify and change the alteration and/or addition proposed, the court shall by order direct said commissioners to proceed with said work with all convenient speed.

(4) So far as possible, such hearing shall be conducted as other hearings and trials in the district courts of the state of Montana, and the laws of the state of Montana with reference to hearings and trials, so far as applicable, shall govern in the conduct of such hearings.

History: En. Sec. 7364E by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.5, R.C.M. 1935; amd. Sec. 2, Ch. 70, L. 1953; R.C.M. 1947, 89-2704.

85-8-404. Appeals and assessments. Any party interested in such hearing, deeming himself aggrieved by the order of the court thereon, may appeal from such order to the supreme court of Montana within 30 days after the entry of such order. If no such appeal is taken within the time limit, the order of the court made upon such hearing will be final and conclusive. If any such alterations and/or additions are authorized by such order, the same shall be made by the commissioners of said district and the cost thereof apportioned in accordance with the last assessment roll of any such drain district or in accordance with the last assessments of any such drainage district confirmed by the court.

History: En. Sec. 7364F by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.6, R.C.M. 1935; R.C.M. 1947, 89-2705.

85-8-405. Exclusion of lands from district. Any lands within a drainage district, which district is not bonded or indebted and which lands have not been and will not in the future be benefited by the drainage system of the district and which lands do not contribute water to seep other lands in the district, may be excluded or eliminated from said district by an order of the district court of the county wherein the said lands are situate upon the proceedings hereinafter set forth being had.

History: En. Sec. 1, Ch. 155, L. 1941; R.C.M. 1947, 89-2706.

85-8-406. Court action — parties. An action for the exclusion of lands from any such drainage district may be brought in the district court of the county wherein said lands are situated by the owner or owners in fee of said lands, who shall be designated as the plaintiff or plaintiffs, and in said action the members of the board of drainage commissioners of said drainage district shall be made defendants.

History: En. Sec. 2, Ch. 155, L. 1941; amd. Sec. 1, Ch. 196, L. 1943; R.C.M. 1947, 89-2707.

85-8-407. Complaint required — contents. (1) Said action shall be commenced by filing in the office of the clerk of the district court a complaint which must contain:

(a) the title of the action, the name of the court and the county in which the action is brought, and the names of the parties to the action;

(b) a statement of the facts constituting the cause of the action, in ordinary and concise language;

(c) a demand for the relief which the plaintiff claims.

(2) The complaint shall be verified in the same manner as complaints in other civil actions.

History: En. Sec. 3, Ch. 155, L. 1941; R.C.M. 1947, 89-2708.

85-8-408. Summons. (1) Upon the filing of the complaint the clerk of the court shall issue a summons which shall contain, in addition to the matters specified in Rules 4 and 12(a), Montana Rules of Civil Procedure, a brief statement of the relief demanded and a description of the lands sought to be excluded from the drainage district.

(2) The summons shall be served upon the president and secretary of the board of drainage commissioners, and such service shall be deemed as service upon the drainage district.

History: (1)En. Sec. 4, Ch. 155, L. 1941; Sec. 89-2709, R.C.M. 1947; (2)En. Sec. 5, Ch. 155, L. 1941; amd. Sec. 2, Ch. 196, L. 1943; Sec. 89-2710, R.C.M. 1947; R.C.M. 1947, 89-2709, 89-2710.

85-8-409. Rules of practice applicable. The same rules relative to the filing of answers and replies relative to other causes of action affecting the title to real property shall apply in actions to exclude lands from a drainage district, and all issues arising may be tried by the court without a jury.

History: En. Sec. 6, Ch. 155, L. 1941; amd. Sec. 45, Ch. 460, L. 1977; R.C.M. 1947, 89-2711.

85-8-410. Court order excluding lands. If the issue shall be found in favor of the plaintiff, the court may make its order describing the lands to be excluded from the district, and a certified copy of the same shall be filed in the office of the county recorder of the county wherein the lands are situate. From and after the date of such order the lands shall no longer be liable for any assessment levied by the district against the lands excluded.

History: **En. Sec. 7, Ch. 155, L. 1941; R.C.M. 1947, 89-2712.**

85-8-411. Appeals. Appeals may be taken from the orders and judgments of the district court to the supreme court of the state of Montana in the same manner as appeals in other causes of action affecting the title to real property.

History: **En. Sec. 8, Ch. 155, L. 1941; R.C.M. 1947, 89-2713.**

85-8-412 through 85-8-420 reserved.

85-8-421. Procedure to bring other drained lands into district. (1) Whenever any drained lands outside a drainage district are receiving the benefits of the drains of said district, by direct or indirect, natural or artificial connection therewith, the commissioners of said district may report said facts to the court and ask that said lands, describing them, be brought into said district and assessed for the benefits received by them from the drains, ditches, or levees of said district.

(2) Upon the filing of said report, the court shall order the owners of such lands to be notified of the filing of said report and the contents thereof and shall require such owners to show cause at a time and place therein fixed, not less than 20 days thereafter, why their lands should not be brought into said district and assessed for said benefits.

(3) At the time and place fixed for hearing said report, any of said landowners may appear and remonstrate against the confirmation of said report. All remonstrances shall be in writing, verified, and shall set forth the facts on which they are based. All issues arising on said report shall be tried by the court without a jury.

History: **En. Secs. 85, 86, 87, Ch. 129, L. 1921; re-en. Secs. 7349, 7350, 7351, R.C.M. 1921; re-en. Secs. 7349, 7350, 7351, R.C.M. 1935; R.C.M. 1947, 89-2805, 89-2806, 89-2807.**

85-8-422. Court order for annexation — appeal. (1) If the court shall find that said lands or any of them are receiving the benefits of any such drain, ditch, or levee, the court shall so find in writing and shall order said lands to be annexed to and made a part of said district and benefits to be assessed against the same by the commissioners of said district.

(2) Said order shall be final and conclusive unless appealed from to the supreme court within 30 days from the date of entry thereof.

History: **En. Secs. 88, 89, Ch. 129, L. 1921; re-en. Secs. 7352, 7353, R.C.M. 1921; re-en. Secs. 7352, 7353, R.C.M. 1935; R.C.M. 1947, 89-2808, 89-2809.**

85-8-423. Assessments against annexed lands. The commissioners shall, after the time for appeal is past, assess against each parcel, tract, and easement of the annexed lands reasonable and just benefits and shall assess against these lands for construction and repairs such sums as are just. If lands similarly situated and benefited are found in the district, the annexed lands shall be assessed a like sum of benefits and damages as the similar lands in the district to which they are sought to be annexed and a sum for construction of the work, which shall be equal to all sums assessed, for the complete construction of the drainage system in the district to which they are sought to be annexed against lands having the same assessment of benefits in the district.

History: En. Sec. 90, Ch. 129, L. 1921; re-en. Sec. 7354, R.C.M. 1921; re-en. Sec. 7354, R.C.M. 1935; amd. Sec. 46, Ch. 460, L. 1977; R.C.M. 1947, 89-2810.

85-8-424. Confirmation of commissioners' report of assessments. The commissioners shall file their report and assessments in court. The court shall, by order, require said owners to show cause at a time and place therein fixed, not less than 20 days after the service of said order, why said report and assessments should not be confirmed. On the hearing of said order to show cause, if a jury trial is demanded, the court shall frame issues on benefits and damages and impanel a jury or adjourn the hearing thereon until some term of court when a jury is in attendance and take the verdict of a jury on such issues. All other issues arising on said report shall be tried by the court. The court shall order all necessary amendments of said report and make written findings of fact and, when said report is amended, shall by order confirm the same.

History: En. Sec. 91, Ch. 129, L. 1921; re-en. Sec. 7355, R.C.M. 1921; re-en. Sec. 7355, R.C.M. 1935; R.C.M. 1947, 89-2811.

Part 5

Bonds and Revenue

85-8-501. Authority to borrow money and issue notes or bonds. The commissioners may:

(1) borrow money, not exceeding the amount of assessment for the cost of construction and additional assessments, as provided in 85-8-367 and 85-8-368, unpaid at the time of borrowing, for the construction or repair of any work which they shall be authorized to construct or repair or for the payment of any indebtedness which they may have lawfully incurred; and

(2) issue notes or negotiable coupon bonds on the district, bearing interest, payable semiannually and not running beyond 1 year after the payment of the last installment of the assessment, on account of which money is borrowed, shall fall due.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(1).

85-8-502. Resolution for issuance of notes or bonds. Before the issuance of said notes or bonds, the commissioners shall pass a resolution providing for the issuance of such notes or bonds. Said resolution shall fix the rate of interest which said notes or bonds shall bear, the time of payment, and, if redeemable before maturity, the date thereof; shall prescribe the denominations, not exceeding $1,000, and form thereof; and may provide that both the principal and interest of said notes and bonds shall be payable at some convenient banking house or trust company's office, to be named in said notes or bonds. Such notes or bonds and the coupons attached thereto shall bear the signatures of the president and the secretary of the drainage district. The corporate seal of the drainage district shall be affixed to each of the notes or bonds.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(2).

85-8-503. Sale of notes or bonds. Upon execution, the notes or bonds shall be deposited with the county treasurer, who shall register the same in a book for that purpose, which shall show the number and amount of each note or bond, its date, the date payable and redeemable, where payable, the person to whom issued. Upon sale of the notes or bonds, the county treasurer shall deliver the same to the person or persons to whom sold, upon their making payment for the same. Said notes or bonds may be sold by the commissioners at either public or private sale, either with or without advertisement, as they may deem it to the best interests of the district. Said notes or bonds shall not be sold at less than 90% of their face value. Said notes or bonds shall not be held to make the commissioners personally liable but shall constitute a lien upon the assessments for the repayment of the principal and interest of such notes or bonds.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(3).

85-8-504. Disposition of excess money. In case any moneys derived from bonds sold to pay for the original construction of said improvement, now or hereafter, remain on hand after the work is completed in original construction and paid for and not raised for damages unpaid for, such residue may be used in the maintenance and repair, as provided in this chapter, before making assessments for such maintenance and repair.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(4).

85-8-505. Refunding indebtedness of district. The court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district by:

(1) taking up and canceling all of its outstanding notes and bonds, as fast as they become due or before, if the holders thereof will surrender the same; and

(2) issuing in lieu thereof new notes or bonds of such district, payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding and the unpaid accrued interest thereon.

History: En. Sec. 80, Ch. 129, L. 1921; re-en. Sec. 7344, R.C.M. 1921; re-en. Sec. 7344, R.C.M. 1935; amd. Sec. 42, Ch. 234, L. 1971; R.C.M. 1947, 89-2502.

Part 6

Taxes and Assessments

85-8-601. Certification and collection of district taxes. (1) On or before the third Monday in August of each year the commissioners shall certify to the agent of the department of revenue in each county wherein the lands of the district are situate a correct list of all the district lands in such county and the owners thereof, together with a statement of the amount of the total tax or assessment against said lands for district purposes for that year. The agent of the department of revenue in each county shall immediately thereupon cause said assessment roll to be entered in the assessment book of said county for each year and prior to the delivery of the assessment book to the county treasurer.

(2) It shall be the duty of the county treasurer of each county in which any drainage district is located, in whole or in part, to collect and receipt for all taxes and assessments levied by any such district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102; provided the treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which such district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of such district tax or assessment, together with the penalty and interest to date of payment on such installment; provided that such payment shall not be deemed a redemption of said property from such tax sale, but shall be credited on account of any redemption that may thereafter be made. In case of any payment pursuant to this subsection, a separate tax receipt shall issue showing exactly what assessments have been paid and shall show that no other tax on said real estate has been received by said treasurer; provided such county treasurer shall not collect or receive or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of such drainage district has been levied unless the assessment levied for such drainage district purposes be paid as herein permitted and the receipt therefor presented to the county treasurer at the time such taxes are paid, or paid at the same time.

History: (1)En. Sec. 65, Ch. 129, L. 1921; re-en. Sec. 7329, R.C.M. 1921; re-en. Sec. 7329, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1945; amd. Sec. 66, Ch. 391, L. 1973; Sec. 89-2401, R.C.M. 1947; (2)En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; re-en. Sec. 2172.1, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1943; Sec. 84-4108, R.C.M. 1947; R.C.M. 1947, 84-4108(part), 89-2401.

85-8-602. Tax collection if lands in several counties. Where lands of any district lie in more than one county, the district taxes or assessments collected in all other counties shall be remitted to the county treasurer of the county wherein the court having jurisdiction of said district is located, on or before January 1 of each year.

History: En. Sec. 66, Ch. 129, L. 1921; re-en. Sec. 7330, R.C.M. 1921; re-en. Sec. 7330, R.C.M. 1935; R.C.M. 1947, 89-2402.

85-8-603. Rules of law applicable to tax collection. The rules of law applying to the collection of taxes and sale of land for taxes shall, unless in conflict with this chapter, apply to the collection and sale of lands for drainage assessments. Delinquent sales of land for unpaid taxes and assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situate, and the right of redemption shall in all cases be made the same as in cases where lands are sold for state or county taxes. Such drainage district shall be entitled to the benefit of all penalties and interest upon delinquent district assessments.

History: En. Sec. 67, Ch. 129, L. 1921; re-en. Sec. 7331, R.C.M. 1921; re-en. Sec. 7331, R.C.M. 1935; R.C.M. 1947, 89-2403.

85-8-604 through 85-8-610 reserved.

85-8-611. Construction assessments — annual installment. At the time of the confirmation of the assessments as provided in 85-8-347, the court may order the assessment for construction of new work to be paid in not more than 15 annual installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work or for the payment of the principal and interest of such notes or bonds of the district as the court grants authority to issue for the construction of new work. The court shall also by such order fix a date on which the first installment of the assessments for construction shall become due, not more than 5 years after the date of the order, and each of the installments shall draw interest at the rate fixed by the court in accordance with law from the date of the order.

History: En. Sec. 61, Ch. 129, L. 1921; re-en. Sec. 7325, R.C.M. 1921; re-en. Sec. 7325, R.C.M. 1935; amd. Sec. 35, Ch. 234, L. 1971; amd. Sec. 42, Ch. 460, L. 1977; R.C.M. 1947, 89-2348.

85-8-612. Lien of assessments — payment of assessments against state lands. (1) From the time of the entry of said order, assessments for construction of new work and additional assessments and interest thereon shall be a lien upon the lands assessed, until paid. Any owner of land or any corporation assessed for construction may, at any time within 30 days after the confirmation of said report, pay into court the amount of the assessment against his land or any tract thereof or against any such corporation. Said payment shall relieve said lands from the lien of said assessment and said corporation from all liability on said assessment.

(2) Upon presentation to the state auditor of an order of the district court having jurisdiction of such drainage district, properly certified, the auditor shall draw his warrant on the treasurer on the common school fund in favor of the commissioners of such drainage district for the total amount that may be assessed against any lands included in such district, the title to which is in the state of Montana, and upon the payment of such warrant such lands shall thereby be relieved from the lien theretofore created for such costs of construction.

History: En. Sec. 62, Ch. 129, L. 1921; re-en. Sec. 7326, R.C.M. 1921; re-en. Sec. 7326, R.C.M. 1935; R.C.M. 1947, 89-2349.

85-8-613. Assessments against certain corporations. Assessments against all public corporations or any private corporation not owning land within the district shall be payable to the county treasurer wherein the court having jurisdiction of the district is located, on or before September 1 of each year.

History: En. Sec. 68, Ch. 129, L. 1921; re-en. Sec. 7332, R.C.M. 1921; re-en. Sec. 7332, R.C.M. 1935; R.C.M. 1947, 89-2404.

85-8-614. Procedure on failure to certify assessments. When commissioners shall fail to certify to the county treasurer of the proper county any one or more drainage assessments for construction or repair or additional assessment against any lands (including improvements where benefited) in said district at the proper time, they may certify the same to the county treasurer at any time thereafter, whether in the same or any subsequent year.

History: En. Sec. 69, Ch. 129, L. 1921; re-en. Sec. 7333, R.C.M. 1921; re-en. Sec. 7333, R.C.M. 1935; amd. Sec. 7, Ch. 409, L. 1973; R.C.M. 1947, 89-2405.

85-8-615. Procedure to levy additional assessments. If in the first assessment for construction the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction or if in any year an additional sum is necessary to pay the lawful indebtedness of said drainage district, further or additional assessments on the land (including improvements where benefited) and corporations benefited, proportioned on the last assessment of benefits which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof; provided, however, that the total assessments for original construction and any additional assessments, other than for maintenance, incidental expense, and interest on bonds, shall, in no event, exceed the total assessments of benefits as provided in 85-8-342. Notice of the hearing of the application for such additional assessment shall be published at least once each week for 3 consecutive weeks in one newspaper published in each county in which said lands, or any part thereof, within said district are situated, which further or additional assessment may be made payable in installments as specified in 85-8-611 and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court in said drainage district.

History: En. Sec. 74, Ch. 129, L. 1921; re-en. Sec. 7338, R.C.M. 1921; re-en. Sec. 7338, R.C.M. 1935; amd. Sec. 8, Ch. 409, L. 1973; R.C.M. 1947, 89-2410.

85-8-616. Correction of omissions. Omission to assess benefits, to assess for construction, to make additional assessments, to make assessment for repairs, to award damages to any one or more tracts of land or easements in a drainage district or to assess benefits, assess for construction, assess for repairs, or make additional assessments against any corporation which should have been assessed does not affect the jurisdiction of the court to confirm the report or to render the benefits assessed, the assessments for construction, additional assessments, or assessments for repairs against other lands or assessments against any corporation voidable; but the commissioners of the drainage district shall thereafter, as soon as they discover the omission or as soon as they have notice thereof, either agree with the omitted parties upon the proper assessments and award the damages or assess such benefits, make such assessments for construction, and make such additional assessments against the omitted lands and corporations and award such damages as are just and report the facts, together with such assessments and awards, to the court.

History: En. Sec. 75, Ch. 129, L. 1921; re-en. Sec. 7339, R.C.M. 1921; re-en. Sec. 7339, R.C.M. 1935; amd. Sec. 43, Ch. 460, L. 1977; R.C.M. 1947, 89-2411.

85-8-617. Illegal assessments. In case the court decides that any land should not have been assessed for drainage purposes or that any assessment is void, the commissioners of the district shall:

(1) levy an additional assessment on all of the assessable lands, irrigation ditches, railroads, corporations, and individual owners, based on the last assessment of the district approved by the court, sufficient to pay the sum lost to the district by reason of such void assessment; or

(2) pay such sum out of the general fund of the district.

History: En. Sec. 78, Ch. 129, L. 1921; re-en. Sec. 7342, R.C.M. 1921; re-en. Sec. 7342, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1923; amd. Sec. 6, Ch. 169, L. 1929; R.C.M. 1947, 89-2412.

85-8-618. Assessment of unassessed, benefited lands. Whenever any lands from which surface or seepage water enters any drain or upon which or through which surface or seepage water has been prevented from flowing because of the construction of any drain have not been included within the drainage district which constructed such drains or drain or the owner of any irrigation ditch or canal from which water seeps, drains, or wastes to, upon, or through lands included within a drainage district has not been assessed for the cost of construction of the drainage system of said drainage district, the commissioners of such district may report said facts to the court and ask that said lands, describing them, be brought into said district and assessed for their proportionate share of the cost of the drainage system of said drainage district and ask that the owner of any such irrigation ditch or canal be assessed its proportionate share of the costs of construction of such drainage system. Thereupon, the same proceedings as set out in 85-8-421 through 85-8-424 for the determination and levy of assessments against drained lands outside of drainage district receiving benefits from the drainage of said district shall be had to determine the proper assessments, if any, to be levied against said lands and the owner of such irrigation ditch or canal to aid in payment of costs of construction.

History: En. Sec. 7364A by Sec. 7, Ch. 169, L. 1929; re-en. Sec. 7364.1, R.C.M. 1935; R.C.M. 1947, 89-2601.

85-8-619. Assessments to have effect of judgment. Each and every sum assessed for construction, for additional assessment, or for repairs against any land or against any corporation, as soon as such assessment is confirmed by the court, shall be and is declared to be a judgment of the district court in favor of said drainage district and against said land or corporation. Unless some other method of collection is herein provided, the judgment shall be collected in the same manner as any other money judgment is collected; provided, that whenever said assessment is a lien upon land, it shall only be collected out of said land on which it is a lien.

History: En. Sec. 93, Ch. 129, L. 1921; re-en. Sec. 7357, R.C.M. 1921; re-en. Sec. 7357, R.C.M. 1935; R.C.M. 1947, 89-2813.

85-8-620. Bonds not to be affected by assessment change. No bonds or other money obligations issued by any drainage district shall be adversely affected by any subsequent change in assessments of benefits.

History: En. Sec. 94, Ch. 129, L. 1921; re-en. Sec. 7358, R.C.M. 1921; re-en. Sec. 7358, R.C.M. 1935; R.C.M. 1947, 89-2814.

85-8-621. Waiver of defective service. In case of failure to serve any notice of any proceeding or hearing provided for in this chapter upon any person or corporation, such person or corporation may appear in open court and waive such defect of service or may waive it by filing in court or delivering to the commissioners of the drainage district, to be filed in court, a written waiver of such defect, in which waiver said defect shall be described, which waiver shall be signed by such party and witnessed and acknowledged before a proper officer having power to take acknowledgments of deeds.

History: En. Sec. 96, Ch. 129, L. 1921; re-en. Sec. 7360, R.C.M. 1921; re-en. Sec. 7360, R.C.M. 1935; R.C.M. 1947, 89-2816.

85-8-622. Agreement of landowners to omitted assessments. In case of omission to assess any corporation or land that should be assessed for benefits, construction, repairs, or additional assessments or to award damages, said omitted party and the owner of omitted land may in writing agree with the commissioners of said district what the assessment should be against said land or against said corporation or what said damages should be, and such agreement shall be acknowledged and witnessed, as provided above for waivers, and be filed in the court.

History: En. Sec. 97, Ch. 129, L. 1921; re-en. Sec. 7361, R.C.M. 1921; re-en. Sec. 7361, R.C.M. 1935; R.C.M. 1947, 89-2817.

85-8-623. Assessments not to be obstructed by preliminary defects. The collection of any assessments made by the commissioners for construction and confirmed by the court shall not be restrained or obstructed by reason of any omission, imperfection, or defect in the organization of any district or in any proceedings occurring prior to the order confirming the assessments of benefits, but such order shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits unless appealed from within 30 days after the entry of such order.

History: En. Sec. 99, Ch. 129, L. 1921; re-en. Sec. 7363, R.C.M. 1921; re-en. Sec. 7363, R.C.M. 1935; re-en. Sec. 7363, R.C.M. 1935; R.C.M. 1947, 89-2819.

85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures. (1) It shall require a vote of the persons on the assessment rolls in any existing district to make Chapter 409, Laws of 1973, applicable to such districts.

(2) Nothing in Chapter 409, Laws of 1973, confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) shall be governed by the following rules:

(a) Notice of the election shall be as provided in [85-8-303], except that the form of the ballot shall be as hereinafter provided.

(b) The manner of conducting the election shall be as provided in [85-8-304].

(c) The qualifications of electors shall be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received shall be entitled to one vote. Commissioners shall prepare a list of such persons and give them notice as provided in 85-8-303.

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district shall be governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by Chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by Chapter 409, Laws of 1973, and shall include the summary as part of the notice provided for by 85-8-303. In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed 20 cents per page.

(e) The ballot shall include the summary as provided for in the preceding subsection and the form of the ballot shall conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots shall determine the outcome of the election.

History: **(1)En. Sec. 10, Ch. 409, L. 1973; amd. Sec. 1, Ch. 147, L. 1974; Sec. 89-2330.1, R.C.M. 1947; (2)En. Sec. 11, Ch. 409, L. 1973; Sec. 89-2330.2, R.C.M. 1947; (3)En. 89-2330.3 by Sec. 2, Ch. 147, L. 1974; amd. Sec. 27, Ch. 342, L. 1977; Sec. 89-2330.3, R.C.M. 1947; R.C.M. 1947, 89-2330.1, 89-2330.2, 89-2330.3; amd. Sec. 12, Ch. 326, L. 1979; amd. Sec. 18, Ch. 400, L. 1979.**

Compiler's Comments

Commissioner correction. The Code Commissioner, 1979, added brackets to the references to 85-8-303 and 85-8-304 appearing in subsections (3)(a) and (3)(b). Section 85-8-303 was amended by Sec. 401, Ch. 571, L. 1979, and 85-8-304 was amended by Sec. 402, Ch. 571, L. 1979, and the references need to be corrected by amendment.

Part 7

Flood Control and Planning

85-8-701. Purpose of part. (1) The purpose of this part is to confer certain additional powers on drainage districts already created or to be created under the laws of the state of Montana for the purposes of cooperating with the government of the United States and landowners in flood prevention and the conservation, development, utilization, and disposal of water for the further development of the economy of this state and for the promotion of the public health and welfare.

(2) The purpose of this part is to enable existing drainage districts or newly created drainage districts as provided herein to enter into cooperative agreements and programs to carry out the purposes of Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water. This part is to be given a liberal construction to the end that these purposes may be carried out, and to this end all political subdivisions of the state of Montana, all agencies and departments of the state government, and all soil conservation districts are authorized to cooperate with, expend funds for, and enter into agreements with drainage districts and any agencies of the United States government for the purpose of carrying out the provisions of this part and Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water.

(3) None of the additional powers granted by this part shall be exercised except for the purpose of participating in projects or programs authorized under Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water.

History: **En. Secs. 1, 5, Ch. 3, L. 1957; R.C.M. 1947, 89-2821, 89-2825.**

85-8-702. Additional powers. To the end that soil and water conservation measures may be improved, flood prevention and drainage programs strengthened, and the land and water economy of the state stabilized, the following additional powers are conferred upon presently existing drainage districts or new districts as created and established under this chapter and laws amendatory thereof and supplementary thereto:

(1) to carry out necessary measures for the prevention of floodwater and sediment damages and for the conservation, development, utilization, and disposal of water and to adopt necessary regulations, policies, and procedures to accomplish these ends, subject to the approval of the district court and on proper notice to interested parties as is provided for in the general statutes pertaining to drainage districts;

(2) to cooperate and enter into agreements to carry out the purposes of this part with (and to receive financial and other assistance from) state agencies and political subdivisions of the state, other organizations created under state laws, and the government of the United States and agencies thereof and to enter into agreements with (and to accept contributions from) private landowners for the purposes of this part;

(3) to construct, operate, and maintain such works of improvement, including structures and related measures, as are needed to carry out their broadened purposes as set forth herein, subject to the approval of the district court and on proper notice to interested parties as set forth in this chapter;

(4) to acquire lands, easements, and rights-of-way for sites for structures and for the flowage or impoundment of waters, such acquisitions for such purposes to be accomplished in the same manner and through the same powers and procedures as provided for under this chapter;

(5) to enlarge their boundaries to permit the construction of additional needed works of improvement or to construct additional needed works of improvement outside their boundaries, subject to approval of the district court and on proper notice to interested parties in the manner set forth in this chapter;

(6) to make assessments and issue bonds for carrying out the purposes of this part and for constructing, maintaining, and operating any structures or improvements established as provided herein, such assessments and bond issues to be made in the same manner and through the same procedures as under this chapter, including the right to extend annual installments for repayment of construction costs over a period of not more than 50 years and subject to the approval of the district court in the same manner and on the same notice to the interested parties as in the first instance of approving assessments, bond issues, and benefits.

History: En. Sec. 2, Ch. 3, L. 1957; R.C.M. 1947, 89-2822.

85-8-703. Petition for additional powers. Before the additional powers granted by this part shall become applicable to any presently existing drainage district in this state, the commissioners of such district shall file a petition in the district court requesting such additional powers as set forth herein and proper notice shall be given to interested landowners in the same manner as in the first instance of creation of the district. Proceedings shall be conducted, insofar as possible, in accordance with the procedures set forth for determining whether or not the district shall be created in the first instance, and the district court shall render its decree or order accordingly.

History: En. Sec. 3, Ch. 3, L. 1957; R.C.M. 1947, 89-2823.

85-8-704. Organization of areas not within existing districts. In areas not presently within the boundaries of an existing drainage district, the landowners may proceed to organize a drainage district for carrying out the purposes of this part, and such organization of such district may be carried out for said purposes according to the procedure for organization of such districts set forth in this chapter. After organization such districts shall have all the powers vested by law in such districts.

History: En. Sec. 4, Ch. 3, L. 1957; R.C.M. 1947, 89-2824.

Part 8

Miscellaneous Provisions

85-8-801. Continuation of existing districts. All drain districts of the state of Montana organized prior to March 1, 1921, and continued in existence pursuant to section 100, Chapter 129, Laws of 1921, shall continue their existence as drain districts under and pursuant to all of the provisions of drainage district laws, and the commissioners of such drain districts shall have all the power and authority conferred by the drainage district laws upon the commissioners of drainage districts.

History: En. Sec. 7364B by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.2, R.C.M. 1935; amd. Sec. 44, Ch. 460, L. 1977; R.C.M. 1947, 89-2701.

85-8-802. Dividing older districts into three divisions. Ten percent of the adult owners or legally authorized agents or representatives of minor owners of lands within any drainage district heretofore created and organized and in existence on February 27,1925, may file a petition with the proper district court to have such district divided into divisions. Such court must thereupon make an order setting a day for hearing such petition and cause a copy of such order to be served on each of the commissioners of such district at least 5 days before the date set for such hearing. On the day fixed in such order (or on any day to which such hearing may be regularly continued) the court must hear such petition and, after such hearing, must make an order dividing such district into three divisions, as nearly equal in area as possible.

History: En. Sec. 16, Ch. 129, L. 1921; re-en. Sec. 7280, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1925; re-en. Sec. 7280, R.C.M. 1935; R.C.M. 1947, 89-2217(part).

CHAPTER 9

CONSERVANCY DISTRICTS

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Part 1

General Provisions

85-9-101. Policy considerations. To provide for the conservation and development of the water and land resources of the state of Montana, conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by this chapter are a public use and will:

(1) be essentially for the public benefit and advantage of the people of Montana;

(2) benefit all industries of the state;

(3) encourage economic growth;

(4) indirectly benefit the state by increasing property valuations;

(5) directly benefit municipalities by providing adequate supplies of water for domestic uses;

(6) directly benefit lands irrigated or drained by works constructed;

(7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;

(8) enhance fish and wildlife habitat;

(9) improve recreational facilities; and

(10) promote the comfort, safety, and welfare of the people of Montana.

History: En. Sec. 1, Ch. 100, L. 1969; R.C.M. 1947, 89-3401.

85-9-102. Purpose of chapter. The purpose of this chapter is to enable the formation of conservancy districts comprised of area in one or more counties to promote the following purposes:

(1) prevent and control floods, erosion, and sedimentation;

(2) provide for regulation of stream flows and lake levels;

(3) improve drainage and to reclaim wet or overflowed lands;

(4) promote recreation;

(5) develop and conserve water resources and related lands, forest, fish, and wildlife resources;

(6) further provide for the conservation, development, and utilization of land and water for beneficial uses, including but not limited to domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

History: En. Sec. 2, Ch. 100, L. 1969; R.C.M. 1947, 89-3402.

85-9-103. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means any person residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district.

(2) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(3) "Cost of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Directors" means the board of directors of a conservancy district.

(7) "District" means a conservancy district.

(8) "Elector" means a person qualified to vote under 85-9-421.

(9) "Notice" means publication at least once each week for 3 consecutive weeks in a newspaper published in each county or, if no newspaper is published in a county, a newspaper of general circulation in the county or counties in which a district is or will be located. The last published notice shall appear not less than 5 days prior to any hearing or election held under this chapter.

(10) "Owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner, nor may he affect the previous title for purposes of this chapter.

(11) "Person" means a natural person, firm, partnership, cooperative, association, public or private corporation, including the state of Montana or the United States, foundation, state agency or institution, county, municipality, district or other political subdivision of the state, federal agency or bureau, or any other legal entity.

(12) "Taxable valuation" is the value as defined in 15-8-111 and does not mean assessed valuation.

(13) "Works" means all property, rights, easements, franchises, and other facilities, including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.

History: En. Sec. 3, Ch. 100, L. 1969; amd. Sec. 183, Ch. 253, L. 1974; amd. Sec. 71, Ch. 566, L. 1977; R.C.M. 1947, 89-3403(part).

85-9-104. Limitations. (1) Nothing in this chapter shall be construed to grant to the district the power to generate, distribute, or sell electric energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, department of health and environmental sciences, or the department of fish, wildlife, and parks but are supplementary thereto and in aid thereof.

History: (1)En. Sec. 48, Ch. 100, L. 1969; Sec. 89-3448, R.C.M. 1947; (2)En. Sec. 49, Ch. 100, L. 1969; amd. Sec. 193, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 50, Ch. 460, L. 1977; Sec. 89-3449, R.C.M. 1947; R.C.M. 1947, 89-3448, 89-3449; amd. Sec. 2, Ch. 218, L. 1979.

Part 2

Creation of Districts

85-9-201. Preliminary survey — petition. (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written petition to the department.

(2) The petition shall:

(a) be signed by at least 10% of the registered voters residing within the boundaries of the proposed conservancy district;

(b) generally describe the proposed boundaries of the district;

(c) specify the purpose or purposes of the district;

(d) list the works contemplated;

(e) request that a preliminary survey be initiated.

(3) The department may initiate a preliminary survey without any prior written petition.

History: En. Sec. 4, Ch. 100, L. 1969; amd. Sec. 1, Ch. 19, L. 1973; R.C.M. 1947, 89-3404.

85-9-202. Action by department of natural resources upon receipt of request. (1) Sooner than 11 days after the request is received, the department shall acknowledge the request.

(2) The department shall itself, through cooperating agencies, or together with cooperating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability, and compatability with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability, or consistency with the state water plan;

(g) sooner than 1 year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, department of fish, wildlife, and parks, department of health and environmental sciences, and other affected state and federal resource agencies for their comments.

History: En. Sec. 5, Ch. 100, L. 1969; amd. Sec. 1, Ch. 302, L. 1971; amd. Sec. 184, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 89-3405; amd. Sec. 2, Ch. 218, L. 1979.

85-9-203. Hearing by department. (1) Upon receipt of the preliminary survey report, the applicants or any one of them may request the department to hold a hearing. The department shall hold the hearing sooner than 61 days after receipt of the request. Notice of the hearing shall be given in accordance with 85-9-103(9).

(2) If the department itself initiated the preliminary survey, it may hold a hearing without being requested to do so.

History: En. Sec. 6, Ch. 100, L. 1969; amd. Sec. 185, Ch. 253, L. 1974; R.C.M. 1947, 89-3406.

85-9-204. Feasibility study and report — adjustment of proposed boundaries. After the hearing, the applicants or any one of them may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report and sooner than 1 year after receipt of the request send copies to the applicants, if any, the department of fish, wildlife, and parks, department of health and environmental sciences, and other affected state and federal water resource agencies. For good cause shown, based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report shall describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability, and consistency with the state water plan and to exclude land which would receive no direct or indirect benefits from the proposed district.

History: En. Sec. 7, Ch. 100, L. 1969; amd. Sec. 1, Ch. 303, L. 1971; amd. Sec. 186, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 89-3407; amd. Sec. 2, Ch. 218, L. 1979.

85-9-205. Procedure for organization of district. If in the opinion of the department the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is the following:

(1) The department shall file a petition requesting organization with the court.

(2) The petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

(f) list the taxable valuation of real property in the proposed district, which must be $100,000 or more;

(g) describe the means of repaying capital costs;

(h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least 51% of the land outside the limits of an incorporated municipality and not fewer than 5% or 100, whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality.

History: En. Sec. 8, Ch. 100, L. 1969; amd. Sec. 187, Ch. 253, L. 1974; R.C.M 1947, 89-3408.

85-9-206. Court hearing on petition — election — limits on court jurisdiction. (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the court shall find that the prayer of the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district and exclude those lands which will not be so benefited;

(b) make an order fixing the time and place of an organizing election;

(c) order the election administrator to conduct the election in accordance with the provisions of Title 13;

(d) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, 51% or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization.

(3) This chapter shall not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation and questions of right growing out of or in any way connected with a priority of appropriation is expressly excluded from this chapter and shall be determined as otherwise provided by the laws of Montana.

History: En. Sec. 9, Ch. 100, L. 1969; R.C.M. 1947, 89-3409; amd. Sec. 373, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

85-9-207. Corporate nature of district. A district is a public corporation and a political subdivision of the state.

History: En. Sec. 3, Ch. 100, L. 1969; amd. Sec. 183, Ch. 253, L. 1974; amd. Sec. 71, Ch. 566, L. 1977; R.C.M. 1947, 89-3403(part).

85-9-208. Filing of documents after organization. Sooner than 31 days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, the department, and to the county clerk and recorder in each of the counties having lands in the district copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law.

History: En. Sec. 10, Ch. 100, L. 1969; amd. Sec. 188, Ch. 253, L. 1974; R.C.M. 1947, 89-3410.

85-9-209. Reimbursement of expenses of organizing election. If organized, the district shall reimburse the county or counties for the expenses incurred in the organizing election. The costs of conducting the preliminary and feasibility studies shall be considered costs of construction of an approved project and shall be included in determination of the repayment schedules by the directors of the district.

History: En. Sec. 11, Ch. 100, L. 1969; amd. Sec. 1, Ch. 18, L. 1973; R.C.M. 1947, 89-3411.

Part 3

Dissolution of Districts

85-9-301. Procedure for dissolution of district. (1) The procedure for dissolution of a district is:

(a) a resolution shall be passed by the directors requesting dissolution;

(b) a petition signed by 20% of the electors representing 10% of the taxable valuation of real property in the district shall be presented to the directors; or

(c) if the district or its directors have been inactive for 1 year or more, any elector may present a petition.

(2) The resolution or petition shall be presented to the court by the directors or by the petitioners if the directors remain inactive.

(3) Not more than one resolution or petition may be presented to the court in any 24-month period, and no such petition may be presented during the first 24 months after a district's initial organization.

History: **En. Sec. 42, Ch. 100, L. 1969; R.C.M. 1947, 89-3442.**

85-9-302. Dissolution election. (1) After receipt of petition or resolution for dissolution, the court shall order an election in the way provided by 85-9-422.

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

History: **En. Sec. 43, Ch. 100, L. 1969; R.C.M. 1947, 89-3443.**

85-9-303. Termination plan — court jurisdiction. (1) In the event the vote is for dissolution, any qualified elector or the board of directors of the district may, within the time fixed by the court, present a written plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

(2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.

(3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.

(4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

History: **En. Sec. 44, Ch. 100, L. 1969; R.C.M. 1947, 89-3444.**

85-9-304. Appointment of receiver — assessments. (1) If no plan is presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of any receiver, all the authority of the directors shall cease. However, until dissolution, the receiver shall have authority to levy assessments for:

(a) the payment of obligations of the district;

(b) the costs of termination.

(3) The directors or, if there is a receiver, then the receiver, with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, he shall direct, under court supervision, the disposition of all assessments collected.

History: **En. Sec. 45, Ch. 100, L. 1969; R.C.M. 1947, 89-3445.**

85-9-305. Entry of dissolution order. (1) The court shall enter an order dissolving the district when it appears to the satisfaction of the court that:

(a) all obligations of the district have been discharged;

(b) all the costs of termination have been paid.

(2) A certified copy of the order shall be recorded by the clerk of the court in all counties in which the district was situated and filed with the secretary of state.

History: En. Sec. 46, Ch. 100, L. 1969; R.C.M. 1947, 89-3446.

85-9-306. County general funds to receive funds remaining after dissolution. All funds remaining after dissolution of a district shall be deposited in the general fund of the counties in which the district is located in proportion to the taxable value of property within the district in each county.

History: En. Sec. 47, Ch. 100, L. 1969; R.C.M. 1947, 89-3447.

Part 4

Organization and Procedure

85-9-401. District directors — appointment, term of office, vacancies, first meeting, and bond. If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors, appoint persons who are electors within the district to membership on the board of directors, and fix their compensation. The number shall not be less than 3 or more than 11 persons. In fixing the number and making the appointments the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors but not to be less than 3 or to exceed 11.

(2) fix the terms of office so that approximately one-third of the directors first appointed shall serve for 1 year, approximately one-third shall serve 2 years, and the remainder shall serve 3 years. All succeeding terms shall be 3 years. Unless excused for good cause, a director who misses three consecutive regular meetings has vacated his position.

(3) fill all vacancies on the board by appointment or reappointment;

(4) specify a date for the first annual meeting of the directors;

(5) specify the amount and form of a corporate surety bond which each member of the directors shall furnish at the expense of the district, conditioned upon his faithful performance of his duties as a director.

History: En. Sec. 12, Ch. 100, L. 1969; R.C.M. 1947, 89-3412.

85-9-402. Officers and meetings. (1) The directors shall select from among themselves a chairman, vice-chairman, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors shall be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the chairman or any two members and (except in case of emergency) upon at least 3 days' notice of the time, place, and purpose of the meeting.

History: En. Sec. 13, Ch. 100, L. 1969; R.C.M. 1947, 89-3413.

85-9-403. Directors' powers — conduct of business. On behalf of the district, the directors may:

(1) adopt an official seal;

(2) sue and be sued;

(3) provide for reimbursing of their members for actual expenses;

(4) merge with other special districts as hereinafter provided;

(5) call upon the county attorney or attorney general for such legal services as the district may require or, in the discretion of the directors, employ private legal counsel.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(1), (2), (5), (9), (11).

85-9-404. Directors' powers to adopt rules. On behalf of the district, the directors may adopt rules to promote and encourage water recreation, including requirements concerning public access areas and facilities, and rules respecting the use of reservoirs and waters, picnic sites, and other recreational areas operated by the district. Rules adopted shall be filed with the secretary of directors and shall be available to any interested party upon reasonable request.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(3).

85-9-405. Directors' powers over property. On behalf of the district, the directors may:

(1) enter private property for the purposes of making surveys, provided that just compensation for actual damages is made;

(2) appropriate water and initiate or participate in the adjudication of streams;

(3) acquire, undertake, construct, develop, improve, maintain, and operate works and all incidental facilities;

(4) acquire by purchase, exchange, gift, lease, grant, devise, or otherwise lands, water, water rights, or rights-of-way as necessary for the execution of any authorized function of the district. Title to all property (including water rights) shall be in the name of the district.

(5) hold and dispose of property as necessary or convenient in the performance of the functions of the district;

(6) allocate or reallocate unused waters of the district.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(4), (6) thru (8), (10), (18).

85-9-406. Directors' powers over finance. On behalf of the district, the directors may:

(1) borrow money and incur indebtedness and issue bonds to finance works as provided by this chapter;

(2) in addition to all voted indebtedness, borrow money as necessary, but the amount shall not at any one time exceed 5% of the taxable valuation of real property in the district;

(3) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;

(4) use any surplus funds to purchase outstanding bonds;

(5) refund bonded indebtedness incurred by the district as provided by this chapter;

(6) after a hearing held in accordance with 85-9-602, make assessments sufficient to meet the budgetary requirements for the coming year.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(13) thru (15), (22) thru (24).

85-9-407. Fees and charges. On behalf of the district, the directors may:

(1) fix and revise, from time to time, and collect rates, fees, and other charges for the services, facilities, or water furnished by the district to any person;

(2) withhold the delivery of water upon which there are any defaults or delinquencies of payment and otherwise dispose of that water while the default or delinquency continues.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(12), (17).

85-9-408. Contracts and agreements by directors. On behalf of the district, the directors may:

(1) contract for service, for water furnished, or for the sale of water with any person;

(2) cooperate with; accept grants, loans, and other assistance from; act as agent for; and enter into agreements with any and all state or federal agencies and exercise all necessary or convenient powers in connection therewith;

(3) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election held as provided in 85-9-422. If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at 90% of their par value to secure the amount to be paid by the district to the United States under any contract. The interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States.

(4) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal reclamation projects, and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election held as provided in 85-9-422. The directors may do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service.

(5) make contracts incidental to the performance of the district's functions and employ and fix the compensation of employees, agents, or consultants as are deemed necessary, including but not limited to a manager, attorneys, accountants, engineers, construction and financial experts;

(6) cooperate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from

owners of lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(16), (19) thru (21), (25), (26).

85-9-409. Participation in federal programs. A district organized under this chapter, by itself or in conjunction with others as a sponsoring organization, may participate in all federal programs, including but not limited to the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts.

History: En. Sec. 15, Ch. 100, L. 1969; amd. Sec. 189, Ch. 253, L. 1974; R.C.M. 1947, 89-3415.

85-9-410. Condemnation authorized. The district may exercise the right of eminent domain in the manner provided by the law to take private property for public use, with just compensation, where the taking is necessary for the purposes of the district. Water rights as such shall not be subject to such taking but may be taken as an incident to the condemnation of land to which such rights are appurtenant, where the taking of the land is the principal purpose of the condemnation.

History: En. Sec. 20, Ch. 100, L. 1969; R.C.M. 1947, 89-3420.

85-9-411. Annual report of directors' activities. Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the department. Reports shall be in the form and contain the information prescribed by the department.

History: En. Sec. 21, Ch. 100, L. 1969; amd. Sec. 190, Ch. 253, L. 1974; R.C.M. 1947, 89-3421.

85-9-412 through 85-9-420 reserved.

85-9-421. Persons entitled to vote. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county, and school district taxes are electors and shall be entitled to vote in elections, provided that:

(a) an elector need not reside within the district in order to vote;

(b) where a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of such corporation shall be entitled to cast a vote on behalf of the corporation;

(c) where land is under contract of sale to a purchaser and the contract is recorded, only the purchaser shall have the right to vote;

(d) guardians, executors, administrators, and trustees of real property within the district shall be entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners or a guardian, executor, administrator, trustee, or purchaser under contract of sale may be required to show his authority by the judges of the election.

History: En. Sec. 23, Ch. 100, L. 1969; R.C.M. 1947, 89-3423.

85-9-422. Election procedures. The election procedures after organization will conform to the requirements of Title 13.

History: En. Sec. 24, Ch. 100, L. 1969; R.C.M. 1947, 89-3424; amd. Sec. 374, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

85-9-423. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 5

Alteration of Districts

85-9-501. Merger of districts. (1) In case two or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this chapter would be served by the merging of the districts and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition shall be filed with the department.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing, and the clerk shall give notice as specified in 85-9-103(9), as well as by mail to the directors of the districts which would be merged. The notice shall contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, should the court find that the averments of the petition are true and that the districts or any of them could feasibly and profitably be merged, it shall order that the merger take place and the districts shall be merged into one district and proceed as such. The court shall designate the corporate name of the district, and further proceedings shall be taken as provided for in this chapter. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one or more of the districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization, or the court may direct that the district or districts so absorbed shall be represented on the directors of the original districts, designating what members of the directors of the original district shall be retired from the new board and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the

written consent, given prior to the merger or inclusion, of those who did not bear the obligations.

History: En. Sec. 38, Ch. 100, L. 1969; amd. Sec. 192, Ch. 253, L. 1974; R.C.M. 1947, 89-3438.

85-9-502. Annexation of property. To annex real property to the district, the procedure is the following:

(1) The directors shall petition the court.

(2) The petition shall:

(a) give a general description of the real property to be annexed sufficient to enable a person to determine if his property is in the proposed annexation;

(b) describe the benefits to accrue to the real property as a result of the annexation.

(3) The court shall:

(a) give notice and hold a hearing on the petition;

(b) upon good cause shown, order or deny the annexation.

History: En. Sec. 39, Ch. 100, L. 1969; R.C.M. 1947, 89-3439.

85-9-503. Preannexation bonds. Real property annexed to a district shall not incur any liens by reason of bonds issued before annexation unless agreed to by the owners of the annexed property, in writing, prior to annexation.

History: En. Sec. 40, Ch. 100, L. 1969; R.C.M. 1947, 89-3440.

85-9-504. Procedure to exclude lands. Any territory included within any district formed under the provisions of this chapter and not benefited in any manner by such district or its inclusion therein may be excluded therefrom. The procedure for exclusion consists of the following:

(1) A petition for exclusion shall be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition shall give a description of the territory sought to be excluded sufficient to enable a person to determine if his property is in the proposed exclusion; shall set forth that such territory is not benefited in any manner by the district or its continued inclusion therein; and shall request that such territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition shall be filed with the secretary of the district and shall be accompanied by a deposit of $100 to meet the costs incident to the process of exclusion. The unexpended balance of the deposit shall be returned to the petitioner.

(4) Upon the filing of such petition with the secretary of the district, the secretary shall duly call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition.

History: En. Sec. 41, Ch. 100, L. 1969; R.C.M. 1947, 89-3441.

Part 6

Finance

85-9-601. Assessments. (1) To the extent that anticipated revenues from rates, fees, and other charges fixed pursuant to 85-9-407(1) will not be sufficient to meet the district's anticipated obligations for annual operation, maintenance, and replacement or depreciation of works or for payment of the interest and principal on bonded indebtedness, the directors may make an assessment of not more than 2 mills on all taxable real property in the district for the purpose of fully meeting such obligations.

(2) In addition to the assessment authorized by subsection (1), the directors may annually make an assessment of up to 3 mills on the taxable real property in the district to pay interest and principal on bonded indebtedness.

(3) The assessments are a lien upon each lot or parcel of land within the district to the extent of the assessment on each.

(4) All assessments have the same force and effect as other liens for taxes, and their collection shall be enforced in the way provided for enforcement of liens for county taxes. Assessments, if not paid, become delinquent at the same time as county taxes.

(5) Except as provided in 85-9-624, approval of the electors is not required for the making of these assessments.

History: En. Sec. 16, Ch. 100, L. 1969; R.C.M. 1947, 89-3416.

85-9-602. Notice of public budget hearing. (1) The directors shall, prior to the first Monday in May of each year, give notice as provided in 85-9-103(9) of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

(2) At the hearing, the directors shall:

(a) review the present budget;

(b) present the budget for the next year;

(c) hear and consider protests from any elector;

(d) adopt the budget for the next year;

(e) set the assessment for the next year.

History: En. Sec. 17, Ch. 100, L. 1969; R.C.M. 1947, 89-3417.

85-9-603. Directors to provide county officials with financial information. (1) Before the second Monday in July of each year, the directors shall provide the county assessor and treasurer with:

(a) the budget for the current fiscal year;

(b) a statement of the amount of special assessments to be collected for the districts;

(c) a listing of all real property within the district.

(2) If the district is located in more than one county, the directors shall provide this information to each of the county assessors and treasurers.

History: En. Sec. 18, Ch. 100, L. 1969; R.C.M. 1947, 89-3418.

85-9-604. Collection and investment of assessments. (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one county, all assessments collected shall be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank insured by the federal deposit insurance corporation or in direct obligations of the

United States government payable within 180 days from the time of investment. All interest collected on the deposits or investments shall be credited to the fund from which the money was withdrawn. However, 5% of the interest shall be deposited in the general fund of the county.

History: En. Sec. 19, Ch. 100, L. 1969; R.C.M. 1947, 89-3419.

85-9-605 through 85-9-610 reserved.

85-9-611. Examination by department of community affairs. At least once each year the department of community affairs shall examine the financial records of each district and file a report of the examination with the department of natural resources and conservation and court. The department of community affairs shall collect a fee for the examination equal to that charged irrigation districts.

History: En. Sec. 22, Ch. 100, L. 1969; amd. Sec. 191, Ch. 253, L. 1974; amd. Sec. 53, Ch. 213, L. 1975; R.C.M. 1947, 89-3422.

85-9-612 through 85-9-620 reserved.

85-9-621. Issuance of bonds — term and multipurpose bonds. A district may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided by this chapter for the cost of works. Bonds issued shall be for a maximum term of not to exceed 40 years. Bonds for more than one purpose may be sold as a single issue.

History: En. Sec. 26, Ch. 100, L. 1969; amd. Sec. 43, Ch. 234, L. 1971; R.C.M. 1947, 89-3426.

85-9-622. Issuance of bonds — determination of amount. In determining the amount of bonds to be issued, the directors may include:

(1) all costs of works;

(2) all costs and estimated costs of issuance of the bonds;

(3) interest which they estimate will accrue on money borrowed during the construction period and for 6 months after the period.

History: En. Sec. 27, Ch. 100, L. 1969; R.C.M. 1947, 89-3427.

85-9-623. Issuance of bonds — resolution and election. When the directors find it necessary to issue bonds, the directors shall:

(1) pass a resolution which includes:

(a) the purpose or purposes for which the bonds will be issued;

(b) the maximum amount and term of the bonds;

(c) the maximum interest rate the bonds will bear;

(d) whether the bonds will be repaid from revenues, assessments, or both;

(2) give notice as provided in 85-9-103(9) which shall include the resolution adopted by the directors, location of polling places, and hours when the polls will be open;

(3) hold an election as provided by 85-9-422.

History: En. Sec. 28, Ch. 100, L. 1969; R.C.M. 1947, 89-3428.

85-9-624. Issuance of bonds — approval and assessments. (1) For a bond issue to be approved, 40% of the qualified electors must vote thereon and 60% of those voting must approve the issue.

(2) Approval of the bond issue shall authorize the directors to make assessments necessary to pay the principal and interest on bonds issued, as provided in 85-9-601.

(3) The directors shall enter the results of the election in their records.

(4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.

(5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

History: **En. Sec. 29, Ch. 100, L. 1969; R.C.M. 1947, 89-3429.**

85-9-625. Issuance of bonds — details of sale. (1) If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. After adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders and may sell at private sale any or all bonds not sold on bids.

(2) The bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board shall reserve the right to reject any and all bids and to sell the said bonds at private sale.

History: **En. Sec. 30, Ch. 100, L. 1969; R.C.M. 1947, 89-3430.**

85-9-626. Tax exempt status. Bonds issued under this chapter have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: **En. Sec. 31, Ch. 100, L. 1969; R.C.M. 1947, 89-3431.**

85-9-627. Interim receipts — negotiability. Pending preparation of the bonds sold under this chapter, receipts or certificates may be issued to purchasers in the form and with provisions as determined by the directors. Bonds and interim receipts or certificates are fully negotiable as provided by the Uniform Commerical Code—Investment Securities.

History: **En. Sec. 32, Ch. 100, L. 1969; R.C.M. 1947, 89-3432.**

85-9-628. Bond registration — copy to county. (1) When duly executed, all bonds issued under this chapter shall be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. They shall be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration shall show:

(a) the number and amount of each bond;

(b) the date of issue and date redeemable;

(c) the name of the purchaser;

(d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy shall be preserved in his office.

History: **En. Sec. 33, Ch. 100, L. 1969; R.C.M. 1947, 89-3433.**

85-9-629. Disposition and investment of sale proceeds. (1) Proceeds from the sales of bonds shall be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds shall be paid by the county treasurer on

written order of the directors. Proceeds shall only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds which is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank insured by the federal deposit insurance corporation or to invest in direct obligations of the United States government. The obligations shall be payable within not to exceed 180 days from the time of deposit or investment.

History: **En. Sec. 34, Ch. 100, L. 1969; R.C.M. 1947, 89-3434.**

85-9-630. Refunding bonds. (1) Refunding bonds may be issued in the same way as any other bonds authorized by this chapter.

(2) All bonds, original issue or refunding issue, shall be redeemable when one-half of the term or 10 years of the term for which they were issued, whichever may be the less, has expired. Redemption may be made on any interest due date of any bond prior to its maturity after the bond shall be subject to redemption as herein provided. The right of redemption, as herein provided, must be stated on the face of each bond.

History: **En. Sec. 35, Ch. 100, L. 1969; R.C.M. 1947, 89-3435.**

85-9-631. Bond retirement fund. Revenue, assessment, and other funds on hand, including reserves pledged for the payment and security of outstanding bonds, may be deposited in a fund created for the retirement of bonds and may be invested and disbursed as provided by this chapter, to the extent consistent with the resolution authorizing the outstanding bonds.

History: **En. Sec. 36, Ch. 100, L. 1969; R.C.M. 1947, 89-3436.**

85-9-632. Revolving funds. (1) The directors by resolution may establish revolving funds to finance, on a reimbursable basis:

(a) construction, purchase, lease, and operation of revenue-producing works;

(b) contracts to provide services or facilities.

(2) Money in the revolving fund shall not be spent for any purposes other than those specified in the resolution. However, excess money may be transferred to any sinking and interest fund of the district.

(3) The county treasurer of the county having the largest portion of the taxable valuation of real property of the district shall maintain a separate account for each revolving fund of the district, and all money collected under the resolution shall be deposited with the county treasurer.

History: **En. Sec. 37, Ch. 100, L. 1969; R.C.M. 1947, 89-3437.**

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

DAMS AND RESERVOIRS

Part 1 — Construction

Section
85-15-101. Dams and reservoirs — how constructed.
85-15-102. Construction in a secure manner.

85-15-103. Jurisdiction of department of natural resources.
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Part 2 — Complaints

85-15-201. Filling of unsafe reservoir — complaint.
85-15-202. Examination and report — subsequent actions.
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Part 3 — County Actions and Penalties

85-15-301. Appointment of experts by county commissioners.
85-15-302. Compensation of experts.
85-15-303. Duty of board when complaint filed.
85-15-304. Penalties.

Part 1

Construction

85-15-101. Dams and reservoirs — how constructed. No person must fill or procure to be filled with water any reservoir which is not so thoroughly and substantially constructed as to safely hold any water that may be turned therein.

History: En. Sec. 2138, Rev. C. 1907; re-en. Sec. 2658, R.C.M. 1921; re-en. Sec. 2658, R.C.M. 1935; R.C.M. 1947, 89-701.

85-15-102. Construction in a secure manner. (1) A person, association, or corporation may not construct or cause to be constructed a dam, dike, or reservoir for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

(2) The department of natural resources and conservation may at any time on its own motion, and it shall, upon complaint on oath being made to the department by three or more persons residing or having property in such location that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam, dike, or reservoir within the state and that they have reason to believe said dam, dike, or reservoir is in an unsafe condition or that it is diverting or is being filled with water to such an extent as to render it unsafe, immediately examine or cause to be examined the dam, dike, or reservoir. If, upon the examination, the department finds that the dam, dike, or reservoir is unsafe or is diverting or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the dam, dike, or reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

(3) If either party is dissatisfied with the findings of the department, it may appeal to the district court of the district wherein the dam, dike, or

reservoir is located, and the court shall hear and determine the matter at the earliest practical time, subject to the right of either party to appeal as in other civil cases; however, the judgment of the department shall control until the final determination of the case.

History: En. Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R.C.M. 1921; re-en. Sec. 2659, R.C.M. 1935; amd. Sec. 5, Ch. 280, L. 1965; amd. Sec. 1, Ch. 370, L. 1971; amd. Sec. 1, Ch. 209, L. 1973; amd. Sec. 1, Ch. 335, L. 1975; R.C.M. 1947, 89-702.

85-15-103. Jurisdiction of department of natural resources. Jurisdiction of the department under 85-15-102 applies to any dam, dike, or reservoir which does or will impound or divert water and which:

(1) has or will have an impounding capacity at maximum water storage elevation of 50 acre-feet or more; or

(2) is 25 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam or dike or from the lowest elevation of the outside limit of the dam or dike, if it is not across a stream channel or watercourse, to the maximum storage elevation.

History: En. Sec. 2, Ch. 370, L. 1971; amd. Sec. 2, Ch. 209, L. 1973; amd. Sec. 2, Ch. 335, L. 1975; R.C.M. 1947, 89-702.1.

85-15-104. Exemption of federal structures. The provisions of 85-15-102 and 85-15-103 shall not apply to dams, dikes, and reservoirs which are subject to federal power commission inspections under federal laws.

History: En. 89-702.2 by Sec. 3, Ch. 335, L. 1975; R.C.M. 1947, 89-702.2.

Part 2

Complaints

85-15-201. Filling of unsafe reservoir — complaint. Upon complaint, on oath made by any person or persons and filed in the district court, that a person, association, or corporation is filling or proposing to fill with water a reservoir or has filled or gathered water in a reservoir and that life and property are thereby endangered, the judge must appoint three disinterested persons, at least one of whom must be a resident of the county in which the dam or reservoir is situated and one of whom must be a competent and experienced civil or hydraulic engineer, each of whom must take an oath that he will examine the dam and reservoir to determine as to its security to the best of his ability.

History: En. Sec. 2140, Rev. C. 1907; amd. Sec. 2, Ch. 168, L. 1917; re-en. Sec. 2660, R.C.M. 1921; re-en. Sec. 2660, R.C.M. 1935; R.C.M. 1947, 89-703.

85-15-202. Examination and report — subsequent actions. (1) It is the duty of the persons so appointed to make a thorough examination of the dam or reservoir. If, upon examination, they find that persons or property are endangered by reason of the dam or reservoir and it is not secure against the pressure of the water confined therein or the water that may be confined therein or against rains and freshets that may occur and if they find that the same is secure against the occurrence of the casualties mentioned or any of them, they must make a report in writing to the judge, which must be entered of record as a proceeding in court.

(2) If, upon such examination as to the safety of such reservoir, they consider such reservoir insufficient and insecure, they must further inquire whether the danger to be apprehended is imminent, and if they are of the opinion that such danger is imminent and that destruction of life or property may result from delay, it is their duty forthwith to draw from such reservoir the waters therein or so much thereof as will insure safety, and they must make return of their action to the judge. In the discharge of such duties, the persons so acting are peace officers.

(3) If, upon examination, they are of opinion that such dam or reservoir is insecure and insufficient but that the danger therefrom is not immediate or imminent, they must so state in their report to the judge. The judge must thereupon cause a copy of the report to be served on the owner or person in charge thereof, with a notice requiring him to make the same secure or to draw the water therefrom without delay. Unless such order is complied with after hearing, the judge may order the sheriff to draw from said dam or reservoir the waters thereof.

History: En. Secs. 2141, 2142, 2143, Rev. C. 1907; re-en. Secs. 2661, 2662, 2663, R.C.M. 1921; re-en. Secs. 2661, 2662, 2663, R.C.M. 1935; R.C.M. 1947, 89-704, 89-705, 89-706.

85-15-203. Issues and trial. The owner of the dam or reservoir may answer the complaint, and an issue may be joined at the hearing. The question of the security and sufficiency of the dam or reservoir may be tried before the court or jury as in other cases.

History: En. Sec. 2144, Rev. C. 1907; re-en. Sec. 2664, R.C.M. 1921; re-en. Sec. 2664, R.C.M. 1935; R.C.M. 1947, 89-707.

85-15-204. Judgment. If the jury finds the dam or reservoir insufficient or insecure, judgment must be entered thereon, declaring such dam or reservoir a nuisance and that all the water be drawn therefrom. Costs may be taxed as in other cases to the losing party.

History: En. Sec. 2145, Rev. C. 1907; re-en. Sec. 2665, R.C.M. 1921; re-en. Sec. 2665, R.C.M. 1935; R.C.M. 1947, 89-708.

85-15-205. New trial and appeal. Any party to the proceedings may move for a new trial and appeal as in other cases.

History: En. Sec. 2146, Rev. C. 1907; re-en. Sec. 2666, R.C.M. 1921; re-en. Sec. 2666, R.C.M. 1935; R.C.M. 1947, 89-709.

85-15-206. Withdrawal of water pending an appeal. The judge may, after the verdict of the jury and pending an appeal, order that the water be drawn from the reservoir so as to make the same secure and safe until the final determination of the proceedings.

History: En. Sec. 2147, Rev. C. 1907; re-en. Sec. 2667, R.C.M. 1921; re-en. Sec. 2667, R.C.M. 1935; R.C.M. 1947, 89-710.

Part 3

County Actions and Penalties

85-15-301. Appointment of experts by county commissioners. Whenever any person is constructing a dam or reservoir and complaint is made to the board of county commissioners that the same is being built in an insecure and unsafe manner and dangerous to life or property or that when constructed will be insecure and dangerous, it is the duty of the board to appoint three experts under whose supervision the dam or reservoir must be constructed. Such reservoir must not be filled with water, nor shall any water be allowed to flow therein, until the owner thereof has filed, in the office of the county clerk, a certificate, signed by a majority of the persons so appointed, to the effect that such dam or reservoir is constructed in a proper manner and is safe and secure.

History: En. Sec. 2148, Rev. C. 1907; re-en. Sec. 2668, R.C.M. 1921; re-en. Sec. 2668, R.C.M. 1935; R.C.M. 1947, 89-711.

85-15-302. Compensation of experts. The persons acting as experts are entitled to a reasonable compensation for their services, to be allowed by the board and paid by the owners of the dam or reservoir.

History: En. Sec. 2149, Rev. C. 1907; re-en. Sec. 2669, R.C.M. 1921; re-en. Sec. 2669, R.C.M. 1935; R.C.M. 1947, 89-712.

85-15-303. Duty of board when complaint filed. Whenever such complaint is made to the board of commissioners, it is the duty of the board, in case such dam or reservoir is not being constructed in a safe and secure manner, to proceed against the owner or persons constructing the same in the manner provided for in this chapter, and any person may file a complaint and proceed against any such owner of or person constructing such dam or reservoir, as provided in this chapter.

History: En. Sec. 2150, Rev. C. 1907; re-en. Sec. 2670, R.C.M. 1921; re-en. Sec. 2670, R.C.M. 1935; R.C.M. 1947, 89-713.

85-15-304. Penalties. Any person violating any of the provisions of this chapter is punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 6 months, or both. If death ensues by reason of any of the acts prohibited by this chapter, the person guilty of the same may be convicted of homicide.

History: En. Sec. 2151, Rev. C. 1907; re-en. Sec. 2671, R.C.M. 1921; re-en. Sec. 2671, R.C.M. 1935; amd. Sec. 64, Ch. 359, L. 1977; R.C.M. 1947, 89-714.

CHAPTER 16

WHARVES AND DOCKS

Part 1 — Wharves and Docks

Section
85-16-101. Who may build wharves and docks.
85-16-102. Public use of wharves and docks.
85-16-103. Revocation of license.
85-16-104. Land under navigable water.
85-16-105. Repealed. Sec. 1, Ch. 164, L. 1979.

Part 1

Wharves and Docks

85-16-101. Who may build wharves and docks. Any person or persons owning land bordering upon any of the navigable waters within the state are granted a license and permit to build docks and wharves over, across, and upon the lands under water belonging to the state. Such docks and wharves shall be extended out into such navigable water such distance only as may be necessary to permit all boats, steamboats, and vessels to safely land thereat and discharge and take on their cargoes and passengers.

History: En. Sec. 1, Ch. 38, L. 1909; re-en. Sec. 1605, R.C.M. 1921; re-en. Sec. 1605, R.C.M. 1935; R.C.M. 1947, 89-601.

85-16-102. Public use of wharves and docks. All docks and wharves built on any of the navigable waters of the state shall be public docks and wharves, and all boats, vessels, and steamboats plying such navigable waters shall have a right to land thereat and take on and discharge their cargoes and passengers thereon. The owner of such dock or wharf shall have the right to charge and collect from the owner or owners of such boat, steamboat, or vessel a reasonable compensation therefor.

History: En. Sec. 2, Ch. 38, L. 1909; re-en. Sec. 1606, R.C.M. 1921; re-en. Sec. 1606, R.C.M. 1935; R.C.M. 1947, 89-602.

85-16-103. Revocation of license. The license granted in 85-16-101 to build docks and wharves over and upon the lands under the navigable waters of this state conveys no title in such lands, and such license may be revoked by the state of Montana at any time.

History: En. Sec. 3, Ch. 38, L. 1909; re-en. Sec. 1607, R.C.M. 1921; re-en. Sec. 1607, R.C.M. 1935; R.C.M. 1947, 89-603.

85-16-104. Land under navigable water. By the term "land under water" is meant all land under any navigable waters of this state extending from high-water mark, or from the meander line where the shores of lakes or streams have been meandered, to the lake or stream.

History: En. Sec. 4, Ch. 38, L. 1909; re-en. Sec. 1608, R.C.M. 1921; re-en. Sec. 1608, R.C.M. 1935; R.C.M. 1947, 89-604.

85-16-105. Repealed. Sec. 1, Ch. 164, L. 1979.

CHAPTERS 17 THROUGH 19

RESERVED

CHAPTER 20

YELLOWSTONE RIVER COMPACT

Part 1 — Yellowstone River Compact

Section
85-20-101. Approval of compact.
85-20-102. Purpose of the chapter.
85-20-103. Definitions.
85-20-104. Filing written statement with department.
85-20-105. Duty to install measuring devices.
85-20-106. Duty to measure water.
85-20-107. Status of prior rights.

85-20-108. Domestic and stock uses exempted.
85-20-109. Board of natural resources and conservation to make rules.
85-20-110. Application to adjudicated and nonadjudicated waters.
85-20-111. Department to make record available.
85-20-112. Services of county attorneys.
85-20-113. Penalty.
Sections 85-20-114 through 85-20-120 reserved.
85-20-121. Yellowstone compact obligations unimpaired.

Part 1

Yellowstone River Compact

85-20-101. Approval of compact. The legislative assembly of the state of Montana hereby approves and ratifies the compact designated as the "Yellowstone River Compact", dated at the city of Billings, state of Montana, on the 8th of December, 1950, signed by Fred E. Buck, A.W. Bradshaw, H.W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P.F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R.R. Renne, and Keith W. Trout, as state representatives of the state of Montana on a compact commission between the states of Montana, North Dakota, and Wyoming, which compact is as follows:

YELLOWSTONE RIVER COMPACT

The state of Montana, the state of North Dakota, and the state of Wyoming, being moved by consideration of interstate comity and desiring to remove all causes of present and future controversy between said states and between persons in one and persons in another with respect to the waters of the Yellowstone River and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone National Park, and desiring to provide for an equitable division and apportionment of such waters and to encourage the beneficial development and use thereof, acknowledging that in future projects or programs for the regulation, control, and use of water in the Yellowstone River basin the great importance of water for irrigation in the signatory states shall be recognized, have resolved to conclude a compact as authorized under the act of congress of the United States of America, approved June 2, 1949 (Public Law 83, 81st congress, First Session), for the attainment of these purposes and to that end, through their respective governments, have named as their respective commissioners:

For the state of Montana:
Fred E. Buck
A. W. Bradshaw
H. W. Bunston
John Herzog
John M. Jarussi
Ashton Jones
Chris Josephson
A. Wallace Kingsbury

P. F. Leonard
Walter M. McLaughlin
Dave M. Manning
Joseph Muggli
Chester E. Onstad
Ed F. Parriott
R. R. Renne
Keith W. Trout

For the state of North Dakota:
I. A. Acker
Einar H. Dahl
J. J. Walsh

For the state of Wyoming:
L. C. Bishop
Earl T. Bower
J. Harold Cash
Ben F. Cochrane
Ernest J. Goppert
Richard L. Greene
E. C. Gwillim
E. J. Johnson
Lee E. Keith
N. V. Kurtz
Harry L. Littlefield
R. E. McNally
Will G. Metz
Mark N. Partridge
Alonzo R. Shreve
Charles M. Smith
Leonard F. Thornton
M. B. Walker

who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to wit:

Article I

A. Where the name of a state is used in this compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state.

B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory state and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state shall be subject to the terms of this compact. Where the singular is used in this article, it shall be construed to include the plural.

Article II

A. The state of Montana, the state of North Dakota, and the state of Wyoming are hereinafter designated as "Montana", "North Dakota", and "Wyoming", respectively.

B. The terms "commission" and "Yellowstone River Compact commission" mean the agency created as provided herein for the administration of this compact.

C. The term "Yellowstone River basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries and includes the area in Montana known as lake basin but excludes those lands lying within Yellowstone National Park.

D. The term "Yellowstone River system" means the Yellowstone River and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone River near Buford, North Dakota, except those portions thereof which are within or contribute to the flow of streams within the Yellowstone National Park.

E. The term "tributary" means any stream which in a natural state contributes to the flow of the Yellowstone River, including interstate tributaries and tributaries thereof but excluding those which are within or contribute to the flow of streams within the Yellowstone National Park.

F. The term "interstate tributaries" means the Clarks Fork; Yellowstone River; the Big Horn River (except Little Big Horn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

G. The terms "divert" and "diversion" mean the taking or removing of water from the Yellowstone River or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone River or of the tributary from which it is taken.

H. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.

I. The term "domestic use" shall mean the use of water by an individual or by a family unit or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

J. The term "stock water use" shall mean the use of water for livestock and poultry.

Article III

A. It is considered that no commission or administrative body is necessary to administer this compact or divide the waters of the Yellowstone River basin as between the states of Montana and North Dakota. The provisions of this compact, as between the states of Wyoming and Montana, shall be administered by a commission composed of one representative from the state of Wyoming and one representative from the state of Montana, to be selected by the governors of said states as such states may choose, and one representative selected by the director of the United States geological survey or whatever federal agency may succeed to the functions and duties of that agency, to be appointed by him at the request of the states to sit with the commission and who shall, when present, act as chairman of the commission without vote, except as herein provided.

B. The salaries and necessary expenses of each state representative shall be paid by the respective state; all other expenses incident to the administration of this compact not borne by the United States shall be allocated to and borne one-half by the state of Wyoming and one-half by the state of Montana.

C. In addition to other powers and duties herein conferred upon the commission and the members thereof, the jurisdiction of the commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this compact, and recommendations to such states upon matters connected with the administration of this compact, and the commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective states and shall compile a report for each year ending September 30 and transmit it to the governors of the signatory states on or before December 31 of each year.

D. The secretary of the army; the secretary of the interior; the secretary of agriculture; the chairman, federal power commission; the secretary of commerce, or comparable officers of whatever federal agencies may succeed to the functions and duties of these agencies and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the compact commission shall cooperate, ex officio, with the commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the compact; and these officers may perform such other services related to the compact as may be mutually agreed upon with the commission.

E. The commission shall have power to formulate rules and regulations and to perform any act which it may find necessary to carry out the provisions of this compact and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the state engineer of each of the signatory states for public inspection.

F. In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this compact, then the member selected by the director of the United States geological survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the states of Wyoming and Montana and said member selected by the director of the United States geological survey, each being entitled to one vote.

G. The commission herein authorized shall have power to sue and be sued in its official capacity in any federal court of the signatory states and may adopt and use an official seal which shall be judicially noticed.

Article IV

The commission shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gauging and evaporation stations as it finds necessary in connection with its duties.

Article V

A. Appropriative rights to the beneficial uses of the water of the Yellowstone River system existing in each signatory state as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.

B. Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone River as of January 1, 1950, there is allocated to each signatory state such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph A of this Article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each state for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

1. Clarks Fork, Yellowstone River
    a. to Wyoming 60%
    to Montana 40%
    b. The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.
2. Big Horn River (exclusive of Little Big Horn River)
    a. to Wyoming 80%
    to Montana 20%
    b. The point of measurement shall be below the last diversion from the Big Horn River above its junction with the Yellowstone River, and the inflow of the Little Big Horn River shall be excluded from the quantity of water subject to allocation.
3. Tongue River
    a. to Wyoming 40%
    to Montana 60%
    b. The point of measurement shall be below the last diversion from the Tongue River above its junction with the Yellowstone River.
4. Powder River (including the Little Powder River)
    a. to Wyoming 42%
    to Montana 58%
    b. The point of measurement shall be below the last diversion from the Powder River above its junction with the Yellowstone River.

C. The quantity of water subject to the percentage allocations in paragraph B 1, 2, 3, and 4 of this Article V shall be determined on an annual water year basis measured from October 1 of any year through September 30 of the succeeding year. The quantity to which the percentage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

1. the total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October 1 to that given date;

2. the net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October 1 to that given date;

3. the net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October 1 to that given date;

4. the quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October 1 to that given date.

D. All existing rights to the beneficial use of waters of the Yellowstone River in the states of Montana and North Dakota below Intake, Montana, valid under the laws of these states as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this compact. During the period May 1 to September 30, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone River below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams having their origin in either Montana or North Dakota, situated entirely in said respective states and flowing into the Yellowstone River below Intake, Montana, are allotted to the respective states in which situated.

E. There are hereby excluded from the provisions of this compact:

1. existing and future domestic and stock water uses of water, provided that the capacity of any reservoir for stock water so excluded shall not exceed 20 acre-feet;

2. devices and facilities for the control and regulation of surface waters.

F. From time to time the commission shall reexamine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just, and equitable, giving consideration among other factors to:

priorities of water rights;
acreage irrigated;
acreage irrigable under existing works; and
potentially irrigable lands.

Article VI

Nothing contained in this compact shall be so construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone River and its tributaries owned by or for Indians, Indian tribes, and their reservations.

Article VII

A. A lower signatory state shall have the right, by compliance with the laws of an upper signatory state, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone River system not specifically apportioned to or appropriated by such upper state as provided in Article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper state for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower state. Provided, that such right is subject to the rights of the upper state to control, regulate, and use the water apportioned to and appropriated by it. And provided further, that should an upper state elect, it may share in the use of any such facilities constructed by a lower state to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

B. Each claim hereafter initiated for an appropriation of water in one signatory state for use in another signatory state shall be filed in the office of the state engineer of the signatory state in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the state engineer of the signatory state in which the water is to be used.

C. Appropriations may hereafter be adjudicated in the state in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory state, such adjudications shall be confirmed in that state by the proper authority. Each adjudication is to conform with the laws of the state where the water is diverted and shall be recorded in the county and state where the water is used.

D. The use of water allocated under Article V of this compact for projects constructed after the date of this compact by the United States of America or any of its agencies or instrumentalities shall be charged as a use by the state in which the use is made. Provided, that such use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

Article VIII

A lower signatory state shall have the right to acquire in an upper state by purchase or through exercise of the power of eminent domain such lands, easements, and rights-of-way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

Article IX

Should any facilities be constructed by a lower signatory state in an upper signatory state under the provisions of Article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

Article X

No water shall be diverted from the Yellowstone River basin without the unanimous consent of all the signatory states. In the event water from another river basin shall be imported into the Yellowstone River basin or transferred from one tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in determining its share of the water apportioned in accordance with Article V herein.

Article XI

The provisions of this compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in Article XV.

Article XII

This compact may be terminated at any time by unanimous consent of the signatory states, and upon such termination all rights then established hereunder shall continue unimpaired.

Article XIII

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States supreme court, for the protection of any right under this compact or the enforcement of any of its provisions.

Article XIV

The physical and other conditions characteristic of the Yellowstone River and peculiar to the territory drained and served thereby and to the development thereof have actuated the signatory states in the consummation of this compact, and none of them, or the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

Article XV

This compact shall become operative when approved by the legislature of each of the signatory states and consented to and approved by the congress of the United States.

Article XVI

Nothing in this compact shall be deemed:

(a) to impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities in and to the use of the waters of the Yellowstone River basin or its capacity to acquire rights in and to the use of said waters;

(b) to subject any property of the United States of America, its agencies, or instrumentalities to taxation by any state or subdivision thereof or to create an obligation on the part of the United States of America, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivison thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) to subject any property of the United States of America, its agencies, or instrumentalities to the laws of any state to an extent other than the extent to which these laws would apply without regard to the compact.

Article XVII

Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of any signatory state or of the United States of America, all other severable provisions of this compact shall continue in full force and effect.

Article XVIII

No sentence, phrase, or clause in this compact or in any provision thereof shall be construed or interpreted to divest any signatory state or any of the agencies or officers of such states of the jurisdiction of the water of each state as apportioned in this compact.

IN WITNESS WHEREOF the commissioners have signed this compact in quadruplicate original, one of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each signatory state.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of Our Lord, one thousand nine hundred and fifty.

Commissioners for the state of Montana:

Fred E. Buck	/S/Fred E. Buck
A. W. Bradshaw	/S/A. W. Bradshaw
H. W. Bunston	/S/H. W. Bunston
John Herzog	/S/John Herzog
John M. Jarussi	/S/John M. Jarussi
Ashton Jones	/S/Ashton Jones
Chris Josephson	/S/Chris Josephson
A. Wallace Kingsbury	/S/A. Wallace Kingsbury
P. F. Leonard	/S/P. F. Leonard
Walter M. McLaughlin	/S/Walter M. McLaughlin
Dave M. Manning	/S/Dave M. Manning
Joseph Muggli	/S/Joseph Muggli
Chester E. Onstad	/S/Chester E. Onstad
Ed F. Parriott	/S/Ed F. Parriott
R. R. Renne	/S/R. R. Renne
Keith W. Trout	/S/Keith W. Trout

Commissioners for the state of North Dakota:

I. A. Acker	/S/I. A. Acker
Einar H. Dahl	/S/Einar H. Dahl
J. J. Walsh	/S/J. J.Walsh

Commissioners for the state of Wyoming:

L. C. Bishop	/S/L. C. Bishop
Earl T. Bower	/S/Earl T. Bower
J. Harold Cash	/S/J. Harold Cash
Ben F. Cochrane	/S/Ben F. Cochrane
Ernest J. Goppert	/S/Ernest J. Goppert
Richard L. Greene	/S/Richard L. Greene
E. C. Gwillim	/S/E. C. Gwillim
E. J. Johnson	/S/E. J. Johnson
Lee K. Keith	/S/Lee K. Keith
N. V. Kurtz	/S/N. V. Kurtz
Harry L. Littlefield	/S/Harry L. Littlefield
R. E. McNally	/S/R. E. McNally
Will G. Metz	/S/Will G. Metz
Mark N. Partridge	/S/Mark N. Partridge
Alonzo R. Shreve	/S/Alonzo R. Shreve
Charles M. Smith	/S/Charles M. Smith

Leonard F. Thornton	/S/Leonard F. Thornton
M. B. Walker	/S/M. B. Walker

I have participated in the negotiation of this compact and intend to report favorably thereon to the congress of the United States.

/S/ R. J. Newell
R. J. Newell,
Representative of the
United States of America.

History: En. Sec. 1, Ch. 39, L. 1951; R.C.M. 1947, 89-903.

Compiler's Comments

Commissioner correction. The Code Commissioner, 1979, has restored the numbering system and paragraph nomenclature used in the Yellowstone River Compact to avoid confusion with the compact as adopted by the other signatory states and the United States.

85-20-102. Purpose of the chapter. Under the provisions of the Yellowstone River Compact (Chapter 39, Laws of Montana 1951), all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River existing in each signatory state as of January 1, 1950, have been recognized and shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation. All appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, are subject to distribution in the states of Montana and Wyoming in accordance to the percentages in the different basins as provided in subsections (2) and (3) of Article V of said compact. The purpose of this chapter is to provide the means to determine the various appropriative rights to the beneficial uses of water of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, and the quantity of water diverted and used by each such appropriator during each year, to enable the state of Montana and the Yellowstone River Compact commission to comply with and to administer the percentage allocations as provided in subsections (2) and (3) of Article V of said compact.

History: En. Sec. 1, Ch. 92, L. 1953; R.C.M. 1947, 89-905.

85-20-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Divert" and "diversion" mean the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

(3) "Domestic use" means the use of water by an individual or by a family unit or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(4) "Interstate tributaries" or "interstate tributary" means the following described rivers which contribute to the flow of the Yellowstone River in the state of Montana, including all tributaries thereof: the Clarks Fork of the Yellowstone River; the Big Horn River (except the Little Big Horn River);

the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(5) "Person" means any person, corporation, partnership, association, municipal corporation, agency, and all others authorized by the laws of the state to appropriate water for beneficial uses.

(6) "Stock water use" means the use of water for livestock and poultry.

History: **En. Sec. 2, Ch. 92, L. 1953; amd. Sec. 156, Ch. 253, L. 1974; R.C.M. 1947, 89-906.**

85-20-104. Filing written statement with department. (1) Any person claiming an appropriative right to the use of any water of any interstate tributary, which right was acquired after January 1, 1950, shall, within 60 days after February 25, 1953, or before he diverts any water, file with the department at its office in Helena, Montana, a written statement containing the following information:

(a) the name of the claimant and his address;

(b) date of appropriation or the date when the water was first applied to a beneficial use;

(c) the quantity of water claimed;

(d) the name of the stream, river, or other source of water from which the diversion is made, if it has a name, and if it does not, a description identifying the same;

(e) the purpose for which the water is claimed and the place of intended use;

(f) the means of diversion;

(g) whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion;

(h) if a notice of appropriation was filed with the county clerk and recorder, the name of the county where it was filed;

(i) whether the appropriation was made from an adjudicated or nonadjudicated stream, river, or other source of water.

(2) The written statement shall be verified by the affidavit of the claimant or someone in his behalf. The affidavit must state that the matters and facts contained in the written statement are true.

History: **En. Sec. 3, Ch. 92, L. 1953; amd. Sec. 10, Ch. 280, L. 1965; amd. Sec. 157, Ch. 253, L. 1974; amd. Sec. 11, Ch. 460, L. 1977; R.C.M. 1947, 89-907.**

85-20-105. Duty to install measuring devices. Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone River, which right was acquired subsequently to January 1, 1950, shall, after February 25, 1953, and before he diverts any such water, install in his ditch or other means of diversion a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the department, and if in its judgment such weir or other measuring device or the installation of the same is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device. The claimant shall not divert any water until he complies with such order.

History: **En. Sec. 4, Ch. 92, L. 1953; amd. Sec. 11, Ch. 280, L. 1965; amd. Sec. 158, Ch. 253, L. 1974; R.C.M. 1947, 89-908.**

85-20-106. Duty to measure water. Each claimant shall measure all the water being diverted by him and keep accurate records thereof on forms prescribed and furnished by the department and, within 15 days after November 1 of each year, file the written records with the department at its office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965; amd. Sec. 159, Ch. 253, L. 1974; R.C.M. 1947, 89-909.

85-20-107. Status of prior rights. The rights to the beneficial use of any water of any interstate tributary of the Yellowstone River acquired prior to and including January 1, 1950, shall not be impaired by or subject to this chapter.

History: En. Sec. 6, Ch. 92, L. 1953; R.C.M. 1947, 89-910.

85-20-108. Domestic and stock uses exempted. Any appropriation of water from any interstate tributary of the Yellowstone River made for domestic or stock water uses will not come within the provisions of this chapter whenever the capacity of a reservoir for stock water does not exceed 20 acre-feet.

History: En. Sec. 7, Ch. 92, L. 1953; amd. Sec. 12, Ch. 460, L. 1977; R.C.M. 1947, 89-911.

85-20-109. Board of natural resources and conservation to make rules. The board of natural resources and conservation shall adopt and the department shall enforce reasonable rules consistent with this chapter and the Yellowstone River Compact.

History: En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965; amd. Sec. 160, Ch. 253, L. 1974; R.C.M. 1947, 89-912.

85-20-110. Application to adjudicated and nonadjudicated waters. The provisions of this chapter shall apply to both adjudicated and nonadjudicated waters of the interstate tributaries of the Yellowstone River.

History: En. Sec. 9, Ch. 92, L. 1953; R.C.M. 1947, 89-913.

85-20-111. Department to make record available. The department shall furnish and make available to the Yellowstone River Compact commission, from the records filed in its office, all appropriative rights acquired after January 1, 1950, to the use of the waters of the interstate tributaries of the Yellowstone River in the state of Montana, the amount of the annual diversions from those interstate tributaries, and any other information that its records may disclose as may be required by the Yellowstone River Compact commission.

History: En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965; amd. Sec. 161, Ch. 253, L. 1974; R.C.M. 1947, 89-914.

85-20-112. Services of county attorneys. The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this chapter within their respective counties as the department shall require.

History: En. Sec. 11, Ch. 92, L. 1953; amd. Sec. 162, Ch. 253, L. 1974; R.C.M. 1947, 89-915.

85-20-113. Penalty. Any person who violates or refuses or neglects to comply with any provision of this chapter or any order or rule adopted by the board or department pursuant thereto or the Yellowstone River Compact is guilty of a misdemeanor and upon conviction shall be fined not less than $25 or more than $200 for each offense.

History: **En. Sec. 12, Ch. 92, L. 1953; amd. Sec. 163, Ch. 253, L. 1974; R.C.M. 1947, 89-916.**

85-20-114 through 85-20-120 reserved.

85-20-121. Yellowstone compact obligations unimpaired. Nothing contained in Chapter 280, Laws of 1965, shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

History: **En. Sec. 20, Ch. 280, L. 1965; R.C.M. 1947, 89-103.7.**

TITLE 86

RESERVED

TITLE 87

FISH AND WILDLIFE

Ch.
1. Organization and Operation.
2. Fishing, Hunting, and Trapping Licenses.
3. Restrictions and Regulations.
4. Commercial Activities.
5. Wildlife Protection.

CHAPTER 1

ORGANIZATION AND OPERATION

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Part 1

General Provisions

87-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Commission" means the fish and game commission provided for in 2-15-3402.

(2) "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15, part 34.

(3) "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

(4) "Warden" means a state fish and game warden.

History: En. 26-101.1 by Sec. 1, Ch. 511, L. 1973; amd. Sec. 3, Ch. 417, L. 1977; R.C.M. 1947, 26-101.1; amd. Sec. 2, Ch. 218, L. 1979.

87-1-102. Penalties. (1) A person violating any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall be subject to forfeiture of his license and privilege to hunt, fish, or trap within this state for a period of not less than 24 months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than $500 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined not less than $300 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than $200 or more than $600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, fish, or fur-bearing animal or any part of any such animal or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than $50 or more than $200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of hunting, fishing, or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than $500 or more than $1,000.

(3) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in parts 1 and 2 of chapter 4.

History: En. Sec. 23, Ch. 238, L. 1921; re-en. Sec. 3706, R.C.M. 1921; amd. Sec. 23, Ch. 192, L. 1925; re-en. Sec. 3706, R.C.M. 1935; amd. Sec. 9, Ch. 224, L. 1947; amd. Sec. 1, Ch. 159, L. 1955; amd. Sec. 29, Ch. 511, L. 1973; amd. Sec. 34, Ch. 9, L. 1977; amd. Secs. 13, 14, Ch. 417, L. 1977; amd. Sec. 1, Ch. 465, L. 1977; R.C.M. 1947, 26-324.

87-1-103. Fines, bonds, and penalties. All fines, bonds, and penalties mentioned in this title may be collected by civil action in the name of the state in any court of competent jurisdiction. All fines, bonds, and costs shall be collected without stay of execution.

History: En. Sec. 74, Ch. 173, L. 1917; re-en. Sec. 3753, R.C.M. 1921; amd. Sec. 25, Ch. 77, L. 1923; re-en. Sec. 3753, R.C.M. 1935; amd. Sec. 41, Ch. 511, L. 1973; R.C.M. 1947, 26-1001.

87-1-104. Payment of cost bill to county. In a prosecution for the violation of fish and game laws where costs are incurred, a cost bill shall be prepared. The cost bill shall include the cost of board of prisoners and shall be presented to the department of administration. If the costs are allowed, the state treasurer shall pay them out of the fish and game moneys in the earmarked revenue fund to the treasurer of the county where the costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917; re-en. Sec. 3754, R.C.M. 1921; re-en. Sec. 3754, R.C.M. 1935; amd. Sec. 42, Ch. 511, L. 1973; R.C.M. 1947, 26-1002.

87-1-105. Duty of attorney general and county attorneys. The attorney general of the state is the legal adviser of the department and shall, together with the several county attorneys, enforce the provisions of this title.

History: En. Sec. 26, Ch. 193, L. 1921; re-en. Sec. 3675, R.C.M. 1921; re-en. Sec. 3675, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-126; amd. Sec. 1, Ch. 44, L. 1979.

87-1-106. Fish and game offices. The principal offices of the commission and department shall be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water shall be furnished by the state of Montana. Rental shall be charged therefor at a rate not to exceed $4 per square foot per year for the total space occupied. Such rental collected shall be deposited to the credit of the state general fund.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R.C.M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; re-en. Sec. 3652, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973; R.C.M. 1947, 26-103(part).

Part 2

Department of Fish, Wildlife, and Parks

87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits,

from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources are appropriated to and under control of the department.

(4) It may discharge any appointee or employee of the department for cause at any time.

(5) It may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds which is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the earmarked revenue fund.

(6) It may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is hereby authorized to make, promulgate, and enforce such reasonable rules and regulations not inconsistent with the provisions of chapter 2 as in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state.

History: Ap. p. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R.C.M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; re-en. Sec. 3653, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1941; amd. Sec. 1, Ch. 40, L. 1951; amd. Sec. 1, Ch. 157, L. 1955; amd. Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; amd. Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; amd. Sec. 1, Ch. 344, L. 1969; amd. Sec. 1, Ch. 279, L. 1971; amd. Sec. 1, Ch. 364, L. 1973; amd. Sec. 3, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-104, R.C.M. 1947; Ap. p. Sec. 4, Ch. 267, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.4, R.C.M. 1947; Ap. p. Sec. 1, Ch. 239, L. 1965; amd. Sec. 2, Ch. 319, L. 1967; amd. Sec. 4, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.5, R.C.M. 1947; R.C.M. 1947, 26-104, 26-202.4, 26-202.5(2); amd. Sec. 2, Ch. 44, L. 1979.

87-1-202. Posting and publication of orders, rules, and regulations. The orders, rules, and regulations of the department shall be published and posted in the following manner:

(1) Those having general application throughout the state shall be published in such manner and to such an extent as the department deems necessary and may direct.

(2) Those of general or special character having local application only shall be published once in some newspaper having general circulation in the locality or district wherein such rules, regulations, or orders are applicable and shall be posted in three conspicuous places in the locality or district in which they are applicable.

History: En. Sec. 28, Ch. 193, L. 1921; re-en. Sec. 3677, R.C.M. 1921; amd. Sec. 11, Ch. 192, L. 1925; re-en. Sec. 3677, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-128.

87-1-203. Effect of orders, rules, and regulations. All orders and rules and regulations for the enforcement of the powers granted to the department shall take effect and be in force after publication and posting as prescribed in this chapter and when so published or posted shall constitute legal notice.

History: En. Sec. 29, Ch. 193, L. 1921; re-en. Sec. 3678, R.C.M. 1921; re-en. Sec. 3678, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-129.

87-1-204. Political activity of employees. While retaining the right to vote as he may please and to express his opinions on all political questions, no employee of the department may use his official authority or influence for the purpose of interfering with an election or affecting the results thereof or for the purpose of coercing or influencing the political actions of any person or body.

History: En. Sec. 9, Ch. 193, L. 1921; re-en. Sec. 3658, R.C.M. 1921; re-en. Sec. 3658, R.C.M. 1935; amd. Sec. 1, Ch. 21, L. 1955; amd. Sec. 4, Ch. 188, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-109.

87-1-205. Grievance procedure. An employee of the department, aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action, who has exhausted all administrative remedies within the department, is entitled to a hearing before the board of personnel appeals provided for in 2-15-1705 and subject to the provisions of 2-18-1011 through 2-18-1013. Any order of the board is binding upon the department.

History: En. 26-109.1 by Sec. 18, Ch. 417, L. 1977; R.C.M. 1947, 26-109.1; amd. Sec. 3, Ch. 44, L. 1979.

87-1-206. Bounty claims for wild animals. (1) The department of fish, wildlife, and parks shall pay bounty claims for wild animals which have been filed with and approved by the board of livestock. The department shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and fishermen, bounties on predatory wild animals as the bounty claims are presented, not exceeding $7,500 per calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the department of fish, wildlife, and parks for rejection or approval. If the claim or certificate is rejected, it shall be returned by the department to the board of livestock. If approved, it shall be delivered to the department of administration for allowance or disallowance. Nothing in this section takes from the department of fish, wildlife, and parks the exclusive power to administer the fish and game moneys at its discretion.

(3) If the department of administration allows the claim, it must send it to the auditor. The auditor must draw his warrant on the state fish and game moneys in the earmarked revenue fund for the amount approved in favor of the claimant, in the order in which the claim is approved.

History: En. Sec. 2, Ch. 174, L. 1939; amd. Sec. 23, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-210; amd. Sec. 2, Ch. 218, L. 1979.

87-1-207. Establishment of checking stations. The department is authorized to establish checking stations where deemed necessary to inspect licenses of hunters and fishermen and to inspect any game animals, fish, or fur-bearing animals in the possession of hunters and fishermen.

History: En. Sec. 1, Ch. 270, L. 1973; R.C.M. 1947, 26-137.

87-1-208. Inspection at checking station. Every person, upon the request of the director or his authorized representative or of any game warden, shall produce for inspection any current fish and game license which has been issued to such person and shall produce for inspection any game animals, birds, fish, or fur-bearing animals in his possession. Hunters or fishermen entering or leaving areas for which checking stations have been established must stop and report if a checking station is on the hunter's or fishermen's route of travel to or from the hunting or fishing area. Failure to stop and report at a checking station when personnel are on duty shall constitute a misdemeanor.

History: En. Sec. 2, Ch. 270, L. 1973; R.C.M. 1947, 26-138.

87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission, may acquire by purchase, condemnation, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(3) Notwithstanding the provisions of 18-4-102, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which

game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature.

History: En. 26-104.6 by Sec. 7, Ch. 511, L. 1973; amd. Sec. 1, Ch. 157, L. 1975; amd. Sec. 4, Ch. 417, L. 1977; R.C.M. 1947, 26-104.6; amd. Sec. 2, Ch. 379, L. 1979.

Compiler's Comments

Severability. Sec. 3, Ch. 379, L. 1979, was a severability section.

87-1-210. Research, training, and other projects. (1) The department may enter into cooperative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train men for wildlife management. It may enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title.

History: En. 26-104.7 by Sec. 8, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.7.

87-1-211. Procuring of plans for construction projects. (1) It shall be the duty of the department, with the consent of the commission, to procure suitable plans and specifications for any construction project under its authority or under authority of the state legislature when the estimated value or cost of the same shall be more than $1,000 but less than $5,000, and the department, with the consent of the commission, shall cause said project to be constructed by contract but in accordance with such plans and specifications. The contract is to be let after publishing a notice stating the time and place of letting the same and where plans and specifications may be seen. Notice shall be published not less than once a week for 2 weeks prior to the time of letting such contract in some newspaper of general circulation in the county in which said project is to be constructed and elsewhere if deemed best by the department. Upon concurrence of the commission, the department, if not satisfied with the bids received or for any other reason, may reject any and all bids received and readvertise as often as may be necessary. Only one bid need be received and the contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond conditioned for the faithful performance and completion of such contract, the same to be approved by the department, with the consent of the commission.

(2) The department may contract for construction projects estimated to cost $1,000 or less without providing for plans or specifications, notice, competitive bidding, or performance bonds.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R.C.M. 1921; re-en. Sec. 3668, R.C.M. 1935; amd. Sec. 1, Ch. 186, L. 1969; amd. Sec. 7, Ch. 417, L. 1977; R.C.M. 1947, 26-119.

87-1-212 through 87-1-220 reserved.

87-1-221. Acquisition, importation, and propagation of fish and game — waterfowl food. The department may:

(1) acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals for propagation, experimental, or scientific purposes;

(2) provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals;

(3) use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms, or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds;

(4) appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals or game or nongame birds;

(5) spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.

History: En. 26-104.4 by Sec. 5, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.4.

87-1-222. Construction and maintenance of fish hatcheries and fish ladders. (1) The department shall furnish plans for, direct, and compel the construction, installation, and repair of fish ladders upon dams and other obstructions in streams. The fish ladders shall be installed and maintained at the expense of the owners of the dam or other obstruction.

(2) The department may purchase and maintain, at the expense of the state fish and game fund, suitable fish screens, fish wheels, or other devices to install in irrigating ditches to prevent fish entering said ditches.

(3) The department may locate, lay out, construct, and maintain nurseries and rearing ponds where fry can be planted, propagated, and reared to be distributed in the waters of this state. The department may spend from fish and game funds sums necessary for this purpose.

History: En. 26-104.5 by Sec. 6, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.5.

87-1-223. Control of state waters for propagation of fish. The department of fish, wildlife, and parks may control the waters of any lake, pond, or stream which lies wholly within the limits of land owned by the state so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the department of fish, wildlife, and parks, the department of fish, wildlife, and parks shall notify the department of state lands that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed or a sufficient general description when not so surveyed. The department of state lands shall make that entry upon its books and maps as may serve as notice to a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of state lands shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is so claimed. This right may not continue for more than 1 year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the department of fish, wildlife, and parks may be terminated upon giving 60 days' notice of the termination to the department of fish, wildlife, and parks.

History: En. Sec. 18, Ch. 193, L. 1921; re-en. Sec. 3667, R.C.M. 1921; re-en. Sec. 3667, R.C.M. 1935; amd. Sec. 16, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-118; amd. Sec. 2, Ch. 218, L. 1979.

87-1-224. Destruction of beaver and beaver dams for protection of public health. (1) When a complaint is made to the department of health and environmental sciences that beaver are obstructing the free flow of a stream flowing through a settled area and into which sewage of a town or city is dumped and the obstruction endangers public health, the department of health and environmental sciences shall immediately investigate the complaint. If it finds that the work of the beavers endangers public health, it shall report the facts to the department of fish, wildlife, and parks.

(2) The department of fish, wildlife, and parks shall immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which shall be designated by the warden making the inspection. The landowner shall remove all beaver and beaver dams as provided by the permit within 10 days after its issuance. If the landowner refuses to remove the beaver or the dams in the 10-day period or if he does not desire to do so and so advises the department, then the department may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(3) The department of fish, wildlife, and parks shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives shall be furnished by the county in which the beaver dams are located.

History: En. 3722(A), R.C.M. 1935 by Sec. 1, Ch. 173, L. 1943; amd. Sec. 32, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-402; amd. Sec. 2, Ch. 218, L. 1979.

87-1-225. Regulation of wild animals damaging property. Upon the request or complaint of any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops thereon, the department shall investigate and study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method be not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. No wild ferocious animal damaging property or endangering life shall be covered by this section.

History: En. Sec. 1, Ch. 60, L. 1957; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-135.

87-1-226. Disposition of meat of animals damaging property. The meat of all animals killed or destroyed pursuant to 87-1-225 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, or the department of social and rehabilitation services. The department shall provide transportation and distribution of the meat.

History: En. Sec. 2, Ch. 60, L. 1957; amd. Sec. 22, Ch. 511, L. 1973; R.C.M. 1947, 26-136.

87-1-227. Hunting rights on adjoining federal wildlife preserve. (1) The department shall negotiate for and enter into written agreements with owners, lessors, lessees, or others having control of areas, tracts, or parcels of land adjoining or contiguous to any United States federal wildlife preserve, including any wildlife refuge for migratory waterfowl in any section of Montana, for the purpose of securing equal hunting and shooting rights for all resident holders of fish and game licenses in Montana on such adjoining and contiguous lands and preventing such preserves from being surrounded by lands whereon such licensees may not enter. The department shall, further, open or cause to be opened to public hunting and shooting of migratory waterfowl on any roads, lanes, and trails not a part of the traveled portion of any federal-aid highway system within a 1-mile limit from the boundaries of any such preserve or refuge. The department shall cause any such area, tract, road, lane, or trail to be plainly posted with clear signs showing the boundaries of the areas, tracts, roads, lanes, or trails open to shooting and hunting by licensees.

(2) The department is hereby authorized to negotiate the payment of a reasonable sum to landowners, lessors, or lessees for the right of the department to create a public shooting area upon their lands. The amount that may be paid for such purpose shall rest in the discretion of the department.

History: En. Secs. 1, 2, Ch. 224, L. 1943; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1120, 26-1121.

87-1-228. Agreement with Indians concerning hunting and fishing — Indian treaty of 1855. (1) Whereas, by treaty of July 16, 1855, between the United States of America, represented by Isaac I. Stephens, governor and superintendent of Indian affairs for the territory of Washington, and the chiefs, headmen, and delegates of the confederated tribes of the Flathead, Kootenai, and Upper Pend Oreille Indians, the said Indians were given the exclusive right to fish and hunt on the Flathead Indian reservation and the privilege of hunting in their usual hunting grounds on large areas of Montana; and whereas, nonmembers of such tribes have the right to hunt and fish on Indian lands by sufferance of such tribes only; and whereas, it appears to be to the common advantage of the state and such Indian tribes that hunting and fishing regulations and privileges on other lands of the state and on Indian lands shall be uniform and that hunting and fishing on such Indian lands shall be in common with the public, now, therefore, the department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of:

(a) obtaining and establishing for the citizens of Montana, regularly licensed to hunt and fish in the state, the privileges of hunting and fishing on Indian lands on the Flathead Indian reservation;

(b) the conservation and protection of fish and game and fur-bearing animals on such Indian lands and on lands adjacent thereto;

(c) setting dates for the opening and closing of seasons for hunting and fishing on such lands for Indians and non-Indians alike, opening and closing of streams and land areas for hunting and fishing;

(d) doing what in its judgment is necessary by way of granting to such tribal Indians state permits to hunt and fish, to be issued without charge to such Indians;

(e) stocking streams and land areas of such Indian lands for the common benefit;

(f) policing such Indian lands for the protection of fish and game; and

(g) in general carrying out the purposes of this section.

(2) If any part of such agreement provides for the payment of money to the tribes, that part must first have the approval of the state legislature.

History: Ap. p. Preamble, Sec. 1, Ch. 198, L. 1947; Sec. 26-131, R.C.M. 1947; Ap. p. Preamble, Sec. 1, Ch. 198, L. 1947; amd. Sec. 2, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-132, R.C.M. 1947; R.C.M. 1947, 26-131, 26-132.

Part 3

Fish and Game Commission

87-1-301. Powers of the commission. The commission shall:

(1) set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(2) establish the hunting, fishing, and trapping rules of the department;

(3) establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(4) have the power within the department to establish wildlife refuges and bird and game preserves;

(5) approve all acquisitions or transfers by the department of interests in land or water;

(6) review and approve the budget of the department prior to its transmittal to the budget office; and

(7) review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000.

History: En. 26-103.1 by Sec. 16, Ch. 417, L. 1977; R.C.M. 1947, 26-103.1.

87-1-302. Commission meetings. The members of the commission shall hold quarterly or other meetings for the transaction of business, at times and places it considers necessary and proper. The meetings shall be called by the chairman or by a majority of the commission and shall be held at the time and place specified in the call for the meeting. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The commission shall keep a record of all the business transacted by it. The chairman and secretary shall sign all orders, minutes, or documents for the commission.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R.C.M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; re-en. Sec. 3652, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973; R.C.M. 1947, 26-103(part).

87-1-303. Rules for use of lands and waters. (1) The commission may adopt and enforce rules governing uses of lands acquired or held under easement by the commission or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules shall be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements shall itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams which are legally accessible to the public or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules shall be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas which are legally accessible to the public. These rules are subject to review and approval by the department of health and environmental sciences as to public health and sanitation before becoming effective. Copies of the rules shall show that endorsement.

History: En. 26-104.9 by Sec. 10, Ch. 511, L. 1973; amd. Sec. 1, Ch. 332, L. 1975; R.C.M. 1947, 26-104.9.

87-1-304. Fixing of seasons and bag and possession limits. (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close, shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and declare areas open to the hunting of deer, antelope, elk, moose, sheep, and goat by bow and arrow permit holders and designate times when only bow and arrows may be used to hunt deer, antelope, elk, moose, sheep, and goat in those areas. It may declare areas open to deer hunting where shotguns only may be used to hunt or kill deer. It may declare areas open to special license holders only and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, animals, or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property or when written complaint of such damage has been filed with the commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) It may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) It may declare certain fishing waters closed to fishing except by persons under 13 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 13 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing.

History: En. 26-104.3 by Sec. 4, Ch. 511, L. 1973; R.C.M. 1947, 26-104.3; amd. Sec. 1, Ch. 220, L. 1979.

87-1-305. Fish and game refuges. (1) The commission may establish and close to hunting, trapping, or fishing any game, bird, or fish refuge on public lands and, with the consent of the owner, on private lands. It may close streams, lakes, or parts of them to hunting, trapping, or fishing.

(2) The commission may establish game refuges in which game and fur-bearing animals, game or nongame birds may breed and replenish. These refuges shall be established by order of the commission upon petition and proper showing that the action is, in judgment of the commission, necessary and in the best interest of the wildlife within the area to be included in the refuge. The purpose of this provision is to establish small refuges rather than large preserves or rather than close large areas to hunting or trapping.

(3) The commission may designate and protect certain areas as resting, feeding, and breeding grounds for migratory birds, in which hunting and molestation are forbidden. The purpose of this provision is not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest, feed, and breed without molestation.

(4) After a petition has been duly filed with the secretary of the commission requesting that an area be set aside as a game refuge, the secretary shall immediately publish a notice in a paper of general circulation in the county in which the area is located. The notice shall state that a hearing on the matter will be held at a designated place in the county not less than 15 days after first publication, at which time and place all interested parties may appear and be heard.

History: En. 26-104.8 by Sec. 9, Ch. 511, L. 1973; R.C.M. 1947, 26-104.8.

Part 4

Director of Fish, Wildlife, and Parks

87-1-401. Director to carry out policies. The director shall carry out the policies of the commission and shall adopt rules authorized by law to implement those policies.

History: **En. 26-106.3 by Sec. 17, Ch. 417, L. 1977; R.C.M. 1947, 26-106.3.**

87-1-402. Oath of director. Before entering upon his official duties, the director shall take and subscribe the constitutional oath of office and shall in addition thereto swear or affirm that he holds no other position or office or any position under any political committee or party. Such oath or affirmation shall be filed in the office of the secretary of state.

History: **En. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R.C.M. 1921; re-en. Sec. 3660, R.C.M. 1935; amd. Sec. 14, Ch. 177, L. 1965; R.C.M. 1947, 26-111(part).**

87-1-403. Regulation of employees by director. (1) The director may suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for 1 year or more immediately preceding any suspension or discharge may demand and receive a hearing before the department on the charges filed. The action of the department resulting from such a hearing constitutes final administrative action for purposes of filing a grievance with the board of personnel appeals as provided in 87-1-205.

(2) The director shall rate all employees on the basis of merit and efficiency in accordance with rules adopted by the department to secure a proper rating of each person employed. The salaries of employees shall be fixed by the department, and travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, shall be allowed employees while upon official business away from designated headquarters.

History: **En. Sec. 8, Ch. 193, L. 1921; re-en. Sec. 3657, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 4, Ch. 453, L. 1977; R.C.M. 1947, 26-108; amd. Sec. 4, Ch. 44, L. 1979.**

87-1-404. Appointment of deputy director and wardens. The director shall have the power to employ and appoint a deputy director and a sufficient number of wardens for the proper enforcement of the fish and game laws of the state and the orders, rules, and regulations of the department and for such other purposes as the director may designate.

History: **En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R.C.M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; re-en. Sec. 3656, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957; amd. Sec. 5, Ch. 417, L. 1977; R.C.M. 1947, 26-107(part).**

87-1-405. Publication of laws. As soon as practicable after the adjournment of each session of the legislature, the director in cooperation with the attorney general shall make a compilation of the laws relating to fish, game, game birds, and animals in force at the date of the compilation and properly index them. Copies of the compilation, sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size.

The director shall distribute to justices of the peace, wardens, and other officers and persons empowered to issue licenses for hunting, fishing, and trapping a supply of the compilation sufficient to permit one copy to be given anyone desiring a copy. The expense incurred in printing the laws shall be paid out of fish and game moneys in the earmarked revenue fund.

History: En. Sec. 25, Ch. 193, L. 1921; re-en. Sec. 3674, R.C.M. 1921; re-en. Sec. 3674, R.C.M. 1935; amd. Sec. 20, Ch. 511, L. 1973; R.C.M. 1947, 26-125.

Part 5

Fish and Game Wardens

87-1-501. Selection and oath of wardens. (1) Wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the department. No person shall be appointed a warden until a certificate shall have been issued to him by the department to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office.

(2) Before entering upon their official duties, state fish and game wardens shall take and subscribe the constitutional oath of office and shall in addition thereto swear or affirm that they hold no other position or office or any position under any political committee or party. Such oath or affirmation shall be filed in the office of the secretary of state.

History: Ap. p. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R.C.M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; re-en. Sec. 3656, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957; amd. Sec. 5, Ch. 417, L. 1977; Sec. 26-107, R.C.M. 1947; Ap. p. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R.C.M. 1921; re-en. Sec. 3660, R.C.M. 1935; amd. Sec. 14, Ch. 177, L. 1965; Sec. 26-111, R.C.M. 1947; R.C.M. 1947, 26-107(part), 26-111(part).

87-1-502. Qualifications, powers, and duties. (1) Wardens shall be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish have necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection.

History: En. Sec. 10, Ch. 193, L. 1921; re-en. Sec. 3659, R.C.M. 1921; amd. Sec. 5, Ch. 192, L. 1925; amd. Sec. 12, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-110.

87-1-503. Ex officio wardens. All sheriffs and their deputies, constables, all peace officers of the state or any subdivision thereof, and all state forest officers, such other officers of the United States forest service or agents of the United States fish and wildlife service which are assigned to duty in this state, and field personnel of the department, as the director may appoint, are hereby made ex officio wardens, without pay, except that the department may, in its discretion, allow traveling expenses as provided for in 2-18-501 through 2-18-503, which, if allowed, shall be paid upon proper vouchers from the state fish and game funds. Ex officio wardens shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed wardens, and it is hereby made their duty to assist, whenever possible, in the enforcement of said laws.

History: En. Sec. 14, Ch. 193, L. 1921; re-en. Sec. 3663, R.C.M. 1921; re-en. Sec. 3663, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1955; amd. Sec. 1, Ch. 236, L. 1965; amd. Sec. 13, Ch. 439, L. 1975; amd. Sec. 6, Ch. 417, L. 1977; R.C.M. 1947, 26-114.

87-1-504. Protection of private property — wardens as ex officio fire wardens. It shall be the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, and 75-10-212(2) on private lands where public recreation is permitted and to act as ex officio fire wardens as provided by 77-5-104.

History: En. Sec. 1, Ch. 85, L. 1969; amd. Sec. 35, Ch. 513, L. 1973; R.C.M. 1947, 26-110.1.

87-1-505. Warden's power in protection of private property. Wardens (state conservation officers) shall have the power of peace officers in the enforcement of 45-6-101, 45-6-203, and 75-10-212(2).

History: En. Sec. 2, Ch. 85, L. 1969; amd. Sec. 36, Ch. 513, L. 1973; R.C.M. 1947, 26-110.2.

87-1-506. Enforcement powers of wardens. A warden may:

(1) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

(2) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package or their contents upon probable cause to believe that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;

(3) search, with a search warrant, any dwelling house or other building;

(4) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;

(5) seize and hold, subject to law or the orders of the department, devices which have been used to unlawfully take game, fish, birds, or fur-bearing animals;

(6) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;

(7) exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.

History: En. 26-110.3 by Sec. 13, Ch. 511, L. 1973; amd. Sec. 1, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-110.3.

87-1-507 through 87-1-510 reserved.

87-1-511. Sale of confiscated birds and animals. All birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer or warden shall be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale shall be at public auction to the highest and best bidder. The director or his wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice shall be published at least once, and the sale shall not be less than 5 or more than 30 days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice and under those terms and conditions which in the discretion of the officers seem conducive to securing full value.

History: En. Sec. 47, Ch. 173, L. 1917; re-en. Sec. 3726, R.C.M. 1921; re-en. Sec. 3726, R.C.M. 1935; amd. Sec. 35, Ch. 511, L. 1973; R.C.M. 1947, 26-506.

87-1-512. Certificate of sale. Upon the sale of property as provided in 87-1-511, the officer shall issue a certificate to the purchasing party, certifying that the purchaser has the legal right to be in possession of the property and that anyone so acquiring this property from the state is prohibited from reselling or using the same for any commercial purpose. During an auction only one carcass of either deer, moose, or elk may be purchased per person. At its discretion, the department may donate unsold carcasses to welfare departments, public institutions, or charitable institutions.

History: En. Sec. 48, Ch. 173, L. 1917; re-en. Sec. 3727, R.C.M. 1921; amd. Sec. 27, Ch. 192, L. 1925; re-en. Sec. 3727, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1975; amd. Sec. 12, Ch. 9, L. 1977; R.C.M. 1947, 26-507.

87-1-513. Disposition of proceeds of sale. The money obtained upon the sale of such property shall be paid over to the court before whom the person having the same in possession at the time of seizure is prosecuted or in which prosecution is pending; and if the person charged with violation of the law is found guilty before said court of violation of the fish and game laws of the state, the money received for the sale of said property shall be paid over to the state treasurer and be deposited by him to the credit of the fish and game fund; but should it be found that the party from whom the same was taken was not guilty of any violation of the fish and game laws of this state, said money shall be paid to the party from whom said birds, animals, fish, or parts or portions thereof were taken. No officer shall be liable for any damage on account of any search, examination, seizure, or sale as herein provided. Where wild animals, game birds, or fish are seized as in this part provided and the person or persons who killed or captured the same cannot be ascertained, then the money so received from the sale of such animals, game birds, or fish shall be paid direct to the state treasurer. The cost of advertising notice of sale, as herein required, shall be paid from the fish and game fund.

History: En. Sec. 49, Ch. 173, L. 1917; re-en. Sec. 3728, R.C.M. 1921; re-en. Sec. 3728, R.C.M. 1935; R.C.M. 1947, 26-508.

87-1-514. Record of confiscated property. The director and wardens shall keep a complete record of all property confiscated because of a violation of the game and fish laws, showing in detail a description of the property, the person from whom it was confiscated, the price received for it upon public sale, and the disposition of the money.

History: En. Sec. 50, Ch. 173, L. 1917; re-en. Sec. 3729, R.C.M. 1921; re-en. Sec. 3729, R.C.M. 1935; amd. Sec. 36, Ch. 511, L. 1973; R.C.M. 1947, 26-509.

Part 6

Finance

87-1-601. Use of fish and game moneys. (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the earmarked revenue fund to the credit of the department. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the department.

(2) Those moneys shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. Those moneys shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

(4) All money collected or received from fines and forfeited bonds relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in an earmarked revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R.C.M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933; amd. Sec. 2, Ch. 114, L. 1945; amd. Sec. 159, Ch. 147, L. 1963; amd. Sec. 17, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-121; amd. Sec. 2, Ch. 640, L. 1979.

87-1-602. Payment of salaries, per diem, and expenses. All salaries, per diem, expenses, and claims incurred by the department or a person appointed or employed by it shall be paid out of fish and game moneys in the general fund, federal and private revenue fund, earmarked revenue fund, or other applicable fund upon warrants properly drawn on those funds.

History: En. Sec. 23, Ch. 193, L. 1921; re-en. Sec. 3672, R.C.M. 1921; re-en. Sec. 3672, R.C.M. 1935; amd. Sec. 17, Ch. 97, L. 1961; amd. Sec. 18, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-123; amd. Sec. 1, Ch. 48, L. 1979.

87-1-603. Payments to counties for department-owned land — exceptions. The director shall before October 15 of each year send a voucher to the treasurer of each county in which the department owns any lands. The voucher shall describe the lands and state the number of acres in each parcel. The voucher shall authorize the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. A county treasurer receiving a voucher shall execute it and return it to the director, who shall approve it and transmit it to the state auditor. The state auditor shall draw a warrant payable to the county in the amount shown on the voucher and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. No voucher or payment may be made to a county in which the department owns less than 100 acres. No voucher or payment may be made to a county for lands owned by the department for game bird farm or fish hatchery purposes or lands administered with money from the general fund.

History: En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953; amd. Sec. 21, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-133; amd. Sec. 2, Ch. 218, L. 1979.

87-1-604. Authorization for allocation of funds to school districts. The county commissioners of any county receiving funds as provided in 87-1-603 may allocate, in such amounts as they determine, any portion of the funds to any school district in the county whenever the school district contains any department lands. Any balance remaining after allocations have been made to school districts shall be credited to the general fund of the county.

History: En. Sec. 2, Ch. 1, L. 1951; amd. Sec. 3, Ch. 9, L. 1977; R.C.M. 1947, 26-134.

87-1-605. Fees used to purchase recreational facilities. (1) One dollar of the fee for Class A resident fishing license, $1 of the fee for Class B-4 nonresident 1-day fishing license, $5 of the fee for the Class B-3 nonresident 6-day fishing license, and $5 of the fee for the Class B nonresident fishing license shall be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land deemed necessary to provide recreational use thereof.

(2) The amount of funds used for operation, development, and maintenance may not exceed 15% of the moneys set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river, or lake frontages and the land deemed necessary to provide recreational use thereof but serve in addition to those funds. The moneys used for operation, development, and maintenance may be used

only for these purposes on lands acquired with funds under this section after April 30, 1974.

History: En. Sec. 3, Ch. 408, L. 1973; amd. Sec. 1, Ch. 82, L. 1977; R.C.M. 1947, 26-234.

Part 7

State-Federal Relationships

87-1-701. Assent to Dingell-Johnson bill. The congress of the United States having passed an act which was approved on August 9, 1950, and which is known as Public Law 681-81st Congress, Chapter 658-Second Session, wherein it is, among other things, provided that "no money apportioned under this act to any state, except as hereinafter provided, shall be expended therein until its legislature, or other state agency authorized by the state constitution to make laws governing the conservation of fish, shall have assented to the provisions of this act and shall have passed laws for the conservation of fish, which shall include prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said fish, wildlife, and parks department, except that, until the final adjournment of the first regular session of the legislature held after passage of this act, the assent of the governor of the state shall be sufficient", and since the moneys referred to in the act of congress are collected in part from the fishermen of this state and will not be returned to the state of Montana except the state of Montana does assent to this act; now, therefore, the state of Montana does assent to the provisions of said act of congress which is commonly known as the Dingell-Johnson bill, but such assent is with the express reservations enumerated in 87-1-701 through 87-1-703. The state of Montana does not, by the passage of 87-1-701 through 87-1-703 or by the consent herein given, surrender to the congress of the United States or any department of the government of the United States any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, nor shall 87-1-701 through 87-1-703 in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of 87-1-701 through 87-1-703 for fish restoration and management projects and projects constructed thereon shall be and remain in the state

History: En. Sec. 1, Ch. 140, L. 1951; R.C.M. 1947, 26-1401; amd. Sec. 2, Ch. 218, L. 1979.

87-1-702. Powers of department relating to fish restoration and management. The department is hereby authorized to perform such acts as may be necessary to the establishment and conduct of fish restoration and management projects as defined and authorized by the act of congress, provided every project initiated under the provisions of the act shall be under the supervision of the department, and no laws or rules or regulations shall be passed, made, or established relating to said fish restoration and management projects except they be in conformity with the laws of the state of Montana or rules promulgated by the department, and the title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, there remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The department shall have no power to accept benefits unless the fish restoration and management projects created or established shall wholly and permanently belong to the state of Montana, except as hereinafter provided.

History: En. Sec. 2, Ch. 140, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1402.

87-1-703. Cooperative agreements on federally owned land. The department, in the name of the state and with the approval of the governor, shall have the power to enter into cooperative agreements on federally owned lands with the government of the United States or any department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any fish restoration projects created and established under the provisions of 87-1-701 through 87-1-703 and shall have the power to acquire by purchase, either by cash or upon installments, or lease or by gift or by devise or individually or in conjunction with the government of the United States or some department or bureau thereof such lands or other property or interest therein as may be necessary for the purpose of carrying on any fish restoration and management projects created and established under the provisions of said Dingell-Johnson bill of the congress of the United States, and the state does reserve to itself, acting through its legislature, the right to direct the department to abandon any fish restoration and management projects created and established as the state may in its judgment think proper. The department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-701 through 87-1-703.

History: En. Sec. 3, Ch. 140, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1403; amd. Sec. 5, Ch. 44, L. 1979.

87-1-704. Federal fish-hatching operations. The government of the United States, the United States commissioner of fisheries, and its or his duly authorized agent or agents may conduct fish-hatching and all operations connected therewith (in any manner and at any time that may be considered necessary and proper by them) at any United States fish cultural station that may be established by the United States government in the state of Montana.

History: En. Sec. 1, Ch. 9, L. 1913; re-en. Sec. 3712, R.C.M. 1921; re-en. Sec. 3712, R.C.M. 1935; amd. Sec. 11, Ch. 9, L. 1977; R.C.M. 1947, 26-330.

87-1-705. Acquisition of land by United States for migratory bird reservation. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water or of land and water in sections 31 and 32 in township 28 north of range 22 west; sections 4, 5, 8, 9, 16, 17, 18, 19, and 20 in township 27 north of range 22 west; sections 13, 14, 15, 16, 21, 22, 23, and 24 in township 27 north of range 23 west, in Flathead County, Montana, as the United States may deem necessary for the establishment of a migratory bird reservation in accordance with the act of congress approved February 18, 1929, entitled: "An Act to More Effectively Meet the Obligations of the United States

Under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of Such Birds; and Authorizing Appropriations for the Establishment of Such Areas, Their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: **En. Sec. 1, Ch. 156, L. 1941; R.C.M. 1947, 26-1108.**

87-1-706. Regulation of bird reserve in Flathead County. Upon the acquisition or establishment of any such refuge in Flathead County, state of Montana, the commission, acting under its authority to designate areas as resting, feeding, and breeding grounds for migratory and other species of birds and wild animals, shall in its discretion establish such areas as a state refuge and adopt such regulations not inconsistent with the regulations of the secretary of the United States department of agriculture governing such areas as it may deem necessary for their protection and may enter into cooperative agreements or arrangements with the secretary for the enforcement of the aforesaid act of congress and the regulations of the secretary of agriculture and for the maintenance and administration of such refuge.

History: **En. Sec. 2, Ch. 156, L. 1941; R.C.M. 1947, 26-1109.**

87-1-707. Water supply for the Benton Lake wildlife refuge. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of a canal right-of-way approximately 66 feet in width, together with an area not to exceed 10 acres as a site for a pumping station works, or of land and water within township 22 north, range 1 west; township 23 north, range 2 west; township 23 north, range 1 west; township 23 north, range 1 east; township 23 north, range 2 east, Teton County; township 22 north, range 1 east, Cascade County; and township 23 north, range 3 east, Chouteau County for the transportation of a supplemental water supply for the Benton Lake national wildlife refuge, Cascade County, established by Executive Order No. 5228, November 21, 1929, and as amended by Executive Order No. 2416, July 25, 1940, in accordance with the act of congress approved February 18, 1929, entitled: "An Act to More Effectively Meet the Obligations of the United States Under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of Such Birds; and Authorizing Appropriations for the Establishment of Such Areas, Their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: **En. Sec. 1, Ch. 227, L. 1953; R.C.M. 1947, 26-1108.1.**

87-1-708. Assent to Pittman-Robertson Act — authority of department. (1) The congress of the United States having passed an act which was approved on September 2, 1937, and which is known as 50 Federal Statutes 917 of the acts of congress, wherein it is, among other things, provided that "no money apportioned under this chapter to any state shall be expended therein until its legislature or other state agency authorized by the state constitution to make laws governing the conservation of wildlife shall have assented to the provisions of this chapter and shall have passed laws for the conservation of wildlife, which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said department", and since the moneys referred to in the act of congress are collected in part from the hunters of this state and will not be returned to the state of Montana except the state of Montana does assent to the act, now, therefore, the state of Montana does assent to the provisions of said act of congress which is commonly known as the Pittman-Robertson bill, but such assent is with the express reservations enumerated in this section, 87-1-709, and 87-1-710. The state of Montana does not by the passage of these sections or by the consent herein given surrender to the congress of the United States or any department of the government of the United States any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, nor shall this section, 87-1-709, and 87-1-710 in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. Provided, however, that nothing herein shall be construed as giving consent to the purchase or acquisition of lands by the United States or by any of its departments or officers for establishing migratory bird sanctuaries under the Migratory Bird Conservation Act of the United States or otherwise and that the title to all lands acquired under the provisions of this section, 87-1-709, and 87-1-710 for wildlife projects and projects constructed thereon shall be and remain in the state of Montana.

(2) The department is hereby authorized to perform such acts as may be necessary to the establishment and conduct of wildlife projects as defined and authorized by said act of congress, provided every project initiated under the provisions of this section, 87-1-709, and 87-1-710 shall be under the supervision of the department, and no laws or rules or regulations shall be passed, made, or established governing the game or fur-bearing animals or the taking or capturing of the same in any such projects except they be in conformity with the laws of the state of Montana or rules promulgated by the department. The title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, and remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The department shall have no power to accept benefits unless the projects created or established shall wholly and permanently belong to the state of Montana, except as provided in 87-1-709. Nothing contained herein shall prevent the department from entering into cooperative agreements on federally owned lands as provided for herein.

History: (1)En. Sec. 1, Ch. 167, L. 1941; Sec. 26-1122, R.C.M. 1947; (2)En. Sec. 2, Ch. 167, L. 1941; amd. Sec. 1, Ch. 80, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-1123, R.C.M. 1947; R.C.M. 1947, 26-1122, 26-1123.

87-1-709. Cooperation with United States for wildlife restoration. The department, in the name of the state and with the approval of the governor, shall have the power to enter into the cooperative agreements on federally owned lands with the government of the United States or some department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any wildlife restoration project and established under the provisions of said Pittman-Robertson Act of the congress of the United States and shall have the power to acquire by purchase, either for cash or upon installments, or lease or by gift or devise, either individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property or interests therein as may be necessary for the purpose of carrying on any wildlife restoration project created and established under the provisions of said Pittman-Robertson Act of the congress of the United States. The state of Montana does reserve to itself, acting through its legislature, the right to direct the department to abandon any wildlife restoration projects created and established as the state of Montana may in its judgment think proper, provided the department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-708 through 87-1-710.

History: En. Sec. 3, Ch. 167, L. 1941; amd. Sec. 2, Ch. 80, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1124.

87-1-710. Use of hunters' license fees for department purposes only. In accordance with the other requirement of said act of congress, it shall be the law of this state, so long as this assent shall be unrepealed, that no license fees paid by hunters in the state of Montana shall be used or taken for any other purpose than the administration and use of the department.

History: En. Sec. 4, Ch. 167, L. 1941; R.C.M. 1947, 26-1125.

87-1-711. Acquisition of land by United States for bison and other big game animals. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water or of land and water in section 31, township 18 north, range 20 west, Lake County, Montana, and section 36, township 18 north, range 21 west, Sanders County, Montana, excepting the Northern Pacific railway and state of Montana lands within said sections, as the United States may deem necessary for the establishment of an exhibition park for bison and other big game animals, reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of applicable federal regulations.

History: En. Sec. 1, Ch. 209, L. 1953; R.C.M. 1947, 26-1126.

87-1-712. Development of national bison range. Upon the acquisition or establishment of any such park in Lake County and Sanders County, the fish and wildlife service, United States department of the interior, agrees to develop, improve, and maintain the park for the display of such native big game animals as are available on the national bison range.

History: En. Sec. 2, Ch. 209, L. 1953; R.C.M. 1947, 26-1127.

87-1-713. Federal waterfowl and wildlife area acquisitions — submission to affected county governing bodies for review. The governor, the department, or their agents, responsible under federal law for final approval of land, wetland, and water acquisitions in fee by the United States government or its agents for waterfowl protection areas or wildlife refuges, or the United States fish and wildlife service shall submit the proposed acquisitions to the governing body of each county in which all or part of the land, wetland, and water areas are proposed to be located for the governing body's recommendations.

History: En. Sec. 1, Ch. 309, L. 1979.

Compiler's Comments

Codification. Sec. 3, Ch. 309, L. 1979, provided: "This act is intended to be codified as an integral part of Title 87, chapter 1, part 7, and the provisions contained in Title 87, chapter 1, part 7, apply to this act."

Effective date. Sec. 4, Ch. 309, L. 1979 provided: "This act is effective on passage and approval." Approved March 26, 1979.

87-1-714. Hearings on proposed waterfowl and wildlife area acquisitions. (1) The governing body of the county affected by a proposed federal acquisition of land under 87-1-713, the department, and the United States fish and wildlife service shall, within 21 days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas, if the governing body deems such inspection appropriate.

(2) If requested by the governing body, the agencies described in subsection (1) shall hold a joint public hearing on the proposed acquisition and shall give public notice of the date, time, and place of the hearing. The hearing shall be held in the county in which the proposed acquisition is located. The hearing shall be held within 30 days of the governing body's receipt of the acquisition proposal. The notice shall be published once a week for 2 successive weeks in a newspaper of general circulation in each county in which all or part of the proposed acquisition is located. The notice shall include the substance of the proposed action and a legal description of the proposed acquisitions.

History: En. Sec. 2, Ch. 309, L. 1979.

Compiler's Comments

Codification. Sec. 3, Ch. 309, L. 1979, provided: "This act is intended to be codified as an integral part of Title 87, chapter 1, part 7, and the provisions contained in Title 87, chapter 1, part 7, apply to this act."

Effective date. Sec. 4, Ch. 309, L. 1979 provided: "This act is effective on passage and approval." Approved March 26, 1979.

CHAPTER 2

FISHING, HUNTING, AND TRAPPING LICENSES

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Part 1

General Provisions

87-2-101. *(Temporary)* **Definitions.** As used in this chapter and chapter 3, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control.

(2) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(3) "Commission" means the state fish and game commission.

(4) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(5) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

(6) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(7) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill, and whooping cranes; rails, including coots, gallinules, sora, or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover,

killdeer, sandpipers, wilson's snipes or jacksnipes, snipes, stilts, plovers, willets, and yellowlegs.

(8) "Nongame birds" means all wild birds not defined herein as upland game birds or migratory game birds.

(9) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(10) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(11) "Person" means individuals, associations, partnerships, and corporations.

(12) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(13) "Upland game birds" means sharptailed grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(14) "Wild buffalo" means buffalo or bison which have not been reduced to captivity.

87-2-101. *(Effective May 1, 1980)* **Definitions.** As used in this chapter and chapter 3, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control.

(2) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(3) "Commission" means the state fish and game commission.

(4) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(5) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

(6) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(7) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes.

(8) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(9) "Open season" means the time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

(10) "Person" means individuals, associations, partnerships, and corporations.

(11) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(12) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(13) "Wild buffalo" means buffalo or bison which have not been reduced to captivity.

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R.C.M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; re-en. Sec. 3681, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959; amd. Sec. 1, Ch. 11, L. 1965; amd. Sec. 1, Ch. 28, L. 1965; amd. Sec. 1, Ch. 46, L. 1971; amd. Sec. 1, Ch. 189, L. 1971; amd. Sec. 1, Ch. 167, L. 1973; amd. Sec. 1, Ch. 27, L. 1974; amd. Sec. 1, Ch. 67, L. 1975; amd. Sec. 1, Ch. 93, L. 1975; amd. Sec. 1, Ch. 113, L. 1975; amd. Sec. 1, Ch. 235, L. 1977; R.C.M. 1947, 26-201; amd. Sec. 6, Ch. 44, L. 1979; amd. Sec. 1, Ch. 46, L. 1979; amd. Sec. 1, Ch. 478, L. 1979.

Compiler's Comments

Administrative action required. Sec. 2, Ch. 46, L. 1979, provided: "It is the intent of this legislature that the department of fish and game take the necessary administrative action to remove lynx, northern swift fox, and wolverine from the listing of nongame species in need of management."

Severability. Sec. 19, Ch. 478, L. 1979, was a severability clause.

Effective date. Sec. 21, Ch. 478, L. 1979, provided: "This act is effective on May 1, 1980."

Composite section. This section was amended by Ch. 44, Ch. 46, and Ch. 478, L. 1979, and a composite was prepared by the Code Commissioner, 1979. Ch. 478 added "Canada lynx" to the definition of "fur-bearing animals" in subsection (4), and Ch. 46 added "lynx" to that definition. The Ch. 46 language was chosen, because it is more general and incorporates the additions intended by both Ch. 478 and Ch. 46.

87-2-102. *(Temporary)* **Resident defined.** In determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1) Members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States who are assigned to duty in Montana and members of their immediate families after a period of 30 days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this chapter. The 30-day residence requirement is waived in time of war.

(2) Any person who has been a resident of the state of Montana, as defined in 1-1-215, for a period of 6 months immediately prior to making application for said license shall be eligible to receive a resident hunting or fishing license.

(3) Any enrollee of a job corps camp located within the state of Montana shall, after a period of 30 days within Montana, be considered a resident for the purpose of making application for a fishing license as long as he remains an enrollee in a Montana camp.

87-2-102. *(Effective May 1, 1980)* **Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions shall apply:

(1) Members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States who are assigned to duty in Montana and members of their immediate families after a period of 30 days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be

considered residents for the purpose of this chapter. The 30-day residence requirement is waived in time of war.

(2) Any person who has been a resident of the state of Montana, as defined in 1-1-215, for a period of 6 months immediately prior to making application for said license shall be eligible to receive a resident hunting, fishing, or trapping license.

(3) Any enrollee of a job corps camp located within the state of Montana shall, after a period of 30 days within Montana, be considered a resident for the purpose of making application for a fishing license as long as he remains an enrollee in a Montana camp.

History: En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959; amd. Sec. 1, Ch. 72, L. 1961; amd. Sec. 1, Ch. 28, L. 1963; amd. Sec. 1, Ch. 33, L. 1967; amd. Sec. 1, Ch. 37, L. 1967; amd. Sec. 1, Ch. 283, L. 1973; R.C.M. 1947, 26-202.3; amd. Sec. 2, Ch. 478, L. 1979.

87-2-103. License required. It is unlawful for any person to:

(1) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, any game bird, or any fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts thereof, except as herein provided or as provided by the department; or

(2) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish, except at the places and during the periods and in the manner herein defined or as defined by the department; or

(3) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts thereof without first having obtained a proper license or permit from the department to do so; or

(4) trap or snare or attempt to trap or snare predatory animals or nongame wildlife without a license as prescribed in 87-2-603 if that person is not a resident as defined in 87-2-102.

History: En. Sec. 2, Ch. 238, L. 1921; re-en. Sec. 3682, R.C.M. 1921; amd. Sec. 13, Ch. 192, L. 1925; amd. Sec. 7, Ch. 59, L. 1927; amd. Sec. 3, Ch. 224, L. 1947; amd. Sec. 27, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202; amd. Sec. 1, Ch. 255, L. 1979.

87-2-104. Number of licenses allowed. Only one license of any one class, except Class B-3 and B-4 licenses, shall be issued to any one person. The department may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen, or destroyed upon payment of the sum of $3 or the cost of the original license, whichever is the smaller amount.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(17); amd. Sec. 1, Ch. 99, L. 1979.

87-2-105. Safety instruction required. (1) No hunting license shall be issued to any resident person under the age of 18 years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

(2) The department shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) No hunting license shall be issued to any nonresident person under the age of 18 years unless he presents to the person authorized to issue such license a certificate of competency as provided in this section or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(2)(a), (part(6)).

87-2-106. Application for license. (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the department. The statements made by the applicant shall be subscribed to before the officer or agent issuing the license.

(2) It is unlawful to subscribe to any application containing a material false statement. Any material false statement contained in an application renders it and any license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 238, L. 1921; re-en. Sec. 3684, R.C.M. 1921; amd. Sec. 1, Ch. 84, L. 1947; amd. Sec. 1, Ch. 157, L. 1969; amd. Sec. 5, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-204.

87-2-107. License form. The form of the license shall be determined and the license blanks prepared by the department and furnished by it to the officers and persons authorized to issue the same. Said licenses shall be issued in the name of the department and be countersigned by the officer or person issuing the same. Each license issued shall be signed by the licensee in ink or indelible pencil on the face thereof.

History: En. Sec. 8, Ch. 238, L. 1921; re-en. Sec. 3688, R.C.M. 1921; re-en. Sec. 3688, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-212.

87-2-108. *(Temporary)* **Information on big game licenses.** The department of fish, wildlife, and parks shall include the following tagging and penalty information printed on the back of all big game licenses issued by the department:

(1) Sign your name.
(2) Write your home address.
(3) Write your county where animal was killed.
(4) Cut out day and month of kill; tags detached before kill are invalid.
(5) Attach tag to animal carcass.
(6) Unless you have permission, it is a misdemeanor, punishable by fine or imprisonment, or both, to hunt on the enclosed land of another or to injure or destroy any fence or other enclosure for the purpose of entering on the land of another. **(Repealed effective May 1, 1980; Sec. 20, Ch. 478, L. 1979)**

History: En. Sec. 1, Ch. 165, L. 1967; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 2, Ch. 218, L. 1979; R.C.M. 1947, 26-212.1

87-2-109. Carrying and exhibiting license. (1) It is unlawful for any person to whom a license or permit has been issued to fish for or take any fish or pursue, hunt, shoot, kill, or take any game bird or game animal or attempt to trap, trap, or take any fur-bearing animal in this state unless he has the license, licenses, or permit in his possession at the time.

(2) It is unlawful to refuse to exhibit a license or permit for inspection to a warden or other officer requesting to see it.

History: En. Sec. 9, Ch. 238, L. 1921; re-en. Sec. 3689, R.C.M. 1921; amd. Sec. 10, Ch. 59, L. 1927; re-en. Sec. 3689, R.C.M. 1935; amd. Sec. 4, Ch. 224, L. 1947; amd. Sec. 24, Ch. 511, L. 1973; amd. Sec. 29, Ch. 9, L. 1977; R.C.M. 1947, 26-213.

87-2-110. Alteration or transfer of license. No person may at any time alter or change in any material manner or loan or transfer to another any license, nor may any person other than the person to whom it is issued use it.

History: En. Sec. 12, Ch. 238, L. 1921; re-en. Sec. 3692, R.C.M. 1921; re-en. Sec. 3692, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1955; amd. Sec. 7, Ch. 9, L. 1977; R.C.M. 1947, 26-217.

87-2-111. Termination of license. Such licenses shall be void after April 30 next succeeding their issuance.

History: En. Sec. 10, Ch. 238, L. 1921; re-en. Sec. 3690, R.C.M. 1921; re-en. Sec. 3690, R.C.M. 1935; R.C.M. 1947, 26-214.

87-2-112. Forfeiture of license or permit for littering. Any holder of a Montana resident or nonresident fishing or hunting license or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit his license and privilege to hunt, fish, camp, or trap within Montana for a period of 1 year from the date of conviction.

History: En. Sec. 1, Ch. 43, L. 1971; amd. Sec. 2, Ch. 480, L. 1973; amd. Sec. 4, Ch. 465, L. 1977; R.C.M. 1947, 26-812.

Part 2

Wildlife Conservation License

87-2-201. Wildlife conservation license prerequisite for other licenses. It shall be unlawful for any person or persons to purchase any hunting, fishing, or trapping license without first having obtained a wildlife conservation license as hereinafter provided.

History: En. Sec. 1, Ch. 172, L. 1969; R.C.M. 1947, 26-229.

87-2-202. Application — stamp attachment — fee — expiration. (1) A wildlife conservation license shall be sold upon written application. The application shall contain the applicant's name, age, occupation, place of residence, post-office address, and length of time in the state of Montana; state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a driver's license or other identification to substantiate the information.

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such rules as the department may prescribe.

(3) Resident and nonresident wildlife conservation licenses may be purchased for a fee of $1.

(4) Licenses issued shall be void after April 30 next succeeding their issuance.

History: En. Sec. 2, Ch. 172, L. 1969; amd. Sec. 2, Ch. 289, L. 1975; amd. Sec. 8, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-230.

87-2-203. Unlawful sales of licenses. It shall be unlawful for any license agent to sell any hunting, fishing, or trapping license to any person who does not present his wildlife conservation license at the time of application for such licenses.

History: En. Sec. 3, Ch. 172, L. 1969; R.C.M. 1947, 26-231.

87-2-204. Disposition of wildlife conservation license fees. The fees from the wildlife conservation license shall be delivered to the state treasurer and deposited by him in the earmarked revenue fund to the credit of the department in accordance with the provisions of 87-1-601.

History: En. Sec. 5, Ch. 172, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-233.

87-2-205. False statement in license application. It is unlawful to subscribe to any false statement in an application for a wildlife conservation license.

History: En. Sec. 4, Ch. 172, L. 1969; amd. Sec. 31, Ch. 9, L. 1977; R.C.M. 1947, 26-232.

Part 3

Fishing Licenses

87-2-301. Class A—resident fishing license. Any resident, as defined by 87-2-102, upon payment of a fee of $5, shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973;

amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(1).

87-2-302. Class B—nonresident fishing license. Any person not a resident, as defined in 87-2-102, upon payment of the sum of $20 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class B license which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(5).

87-2-303. Class B-3—temporary nonresident or tourist fishing license. Any person not a resident, as defined in 87-2-102, upon payment of the sum of $10 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the department for a period of 6 days, inclusive of the dates indicated on the license.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(8).

87-2-304. Class B-4—one-day nonresident fishing license. Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of $2 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a 1-day nonresident fishing license which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the department for 1 calendar day as indicated on the license.

History: En. Sec. 1, Ch. 117, L. 1969; amd. Sec. 2, Ch. 408, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.6.

87-2-305. Navigable waters subject to fishing rights. Navigable rivers, sloughs, or streams between the lines of ordinary high water thereof of the state of Montana and all rivers, sloughs, and streams flowing through any public lands of the state shall hereafter be public waters for the purpose of angling, and any rights of title to such streams or the land between the high water flow lines or within the meander lines of navigable streams shall be subject to the right of any person owning an angler's license of this state who desires to angle therein or along their banks to go upon the same for such purpose.

History: En. Sec. 3, Ch. 95, L. 1933; re-en. Sec. 3717.3, R.C.M. 1935; R.C.M. 1947, 26-338.

Part 4

Game Bird Licenses

87-2-401. *(Temporary)* **Class A-1—resident game bird license.** Except as herein provided, any resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of $4, receive a Class A-1 license which will entitle the holder to pursue, hunt, shoot, and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the department."

87-2-401. *(Effective May 1, 1980)* **Class A-1—resident game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of $4, receive a Class A-1 license which will entitle the holder to pursue, hunt, shoot, and kill game birds and possess the carcasses of game birds as authorized by department rules.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(part(2)); amd. Sec. 3, Ch. 478, L. 1979.

87-2-402. *(Temporary)* **Class B-1—nonresident game bird license.** Except as herein provided, any person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of the sum of $30 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class B-1 license which shall entitle the holder thereof to pursue, hunt, shoot, kill, and possess game birds as authorized by the rules and regulations of the department.

87-2-402. *(Effective May 1, 1980)* **Class B-1—nonresident game bird license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $30 may receive a Class B-1 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill game birds and possess the carcasses of game birds as authorized by department rules.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(part(6)); amd. Sec. 4, Ch. 478, L. 1979.

87-2-403. *(Temporary)* **Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1, Class B-1, or Class B-2 license. Each tag shall authorize the holder to hunt, shoot, capture, or possess one wild turkey during such times and such places as the department shall authorize an open season on wild turkey.

(2) The fee for a wild turkey tag shall be $2. Turkey tags shall be issued either by a drawing system or in unlimited number according to such rules and regulations as the department shall prescribe.

87-2-403. *(Effective May 1, 1980)* **Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license. Each tag shall entitle the holder to pursue, hunt, shoot, and kill one wild turkey and possess the carcass thereof, during such times and such places as the department shall authorize an open season on wild turkey.

(2) The fee for a wild turkey tag shall be $2. Turkey tags shall be issued either by a drawing system or in unlimited number as authorized by department rules.

History: En. Sec. 1, Ch. 35, L. 1959; amd. Sec. 3, Ch. 148, L. 1963; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-510; amd. Sec. 5, Ch. 478, L. 1979.

Part 5

Game Animal Licenses

87-2-501. *(Temporary)* **Class A-3, A-4, A-5, A-6—resident deer, elk, and bear licenses.** Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the department:

(1) Class A-3, deer A tag, $7;
(2) Class A-4, deer B tag, $12;
(3) Class A-5, elk tag, $8;
(4) Class A-6, black or brown bear tag, $6.

87-2-501. *(Effective May 1, 1980)* **Class A-3, A-4, A-5, A-6—resident deer, elk, and bear licenses.** Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(1) Class A-3, deer A tag, $7;
(2) Class A-4, deer B tag, $5;
(3) Class A-5, elk tag, $8;
(4) Class A-6, black or brown bear tag, $6.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec.

1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(4); amd. Sec. 6, Ch. 478, L. 1979.

87-2-502. *(Temporary)* **Class B-5—nonresident deer license.** Any person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to the season for which the license is issued and a holder of a nonresident conservation license, upon the payment of the sum of $50, shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one deer in the area or areas designated in the license, as determined by the department, and to possess the carcass of same. **(Repealed effective May 1, 1980; Sec. 20, Ch. 478, L. 1979)**

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(9).

87-2-503. *(Temporary)* **Class B-6—nonresident antelope license.** Any person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and a holder of a Class B-2 nonresident combination license, upon the payment of the sum of $50, shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one antelope in the area designated in the license, as determined by the department, and to possess the carcass of same. **(Repealed effective May 1, 1980; Sec. 20, Ch. 478, L. 1979)**

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(10).

87-2-504. *(Temporary)* **Class B-7 and B-8—nonresident deer licenses.** Any person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a B-2 nonresident combination license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $50; Class B-8, deer B tag, $50; and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulations of the department.

87-2-504. *(Effective May 1, 1980)* **Class B-7 and B-8—nonresident deer licenses.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $100; Class B-8, deer B tag, $50; and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 license, a Class B-7 license must be assigned for use in a specific administrative region or portion thereof.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(11); amd. Sec. 7, Ch. 478, L. 1979.**

87-2-505. *(Temporary)* **Class B-10—nonresident big game combination license.** Any person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license for $225 which shall entitle the holder to all the privileges of a B-2 nonresident combination license, a deer A tag, an elk tag, and a black bear license. This license includes the nonresident conservation license as prescribed in 87-2-202.

87-2-505. *(Effective May 1, 1980)* **Class B-10—nonresident big game combination license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of $225 and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, Class B-7, and black bear licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(12); amd. Sec. 8, Ch. 478, L. 1979.**

87-2-506. *(Temporary)* **Restrictions allowed on nonresident game animal licenses.** The department may prescribe by rule or regulation the number of Class B-5 and B-6, B-7, B-8, or B-10 licenses to be issued in each of the hunting districts designated by it. Any license sold may be restricted to a specific hunting area and may specify the species, age, and sex to be taken in order to insure the proper management and propagation of game animals in these areas; provided, however, that no number limit shall be placed on B-7, B-8, and B-10 licenses by area except in major hunter concentration areas as determined by the department. Not more than 17,000 nonresident big game combination licenses (B-10) may be sold in any one license year.

87-2-506. *(Effective May 1, 1980)* **Restrictions on hunting licenses.** (1) The department may prescribe by rule the number of hunting licenses to be issued. Any license sold may be restricted to a specific administrative region, hunting district, or other designated area and may specify the species, age, and sex to be taken and the time period for which the license is valid.

(2) When the number of valid resident applications for licenses or permits of a single class or type exceeds the number of licenses or permits the department desires to issue in an administrative region, hunting district, or other designated area, then the number of licenses or permits issued to nonresident license or permit holders in the region, district, or area may not exceed 10% of the total issued.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(f); amd. Sec. 9, Ch. 478, L. 1979.

87-2-507. *(Temporary)* **Class D-1—nonresident mountain lion license.** Any person not a resident, as defined in 87-2-102, but who is 12 years of age or older and a holder of a nonresident Class B-2 combination license, upon payment of the sum of $25 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class D-1 license which shall entitle the holder thereof to pursue, hunt, shoot, kill, and possess mountain lion as authorized by the rules and regulations of the department.

87-2-507. *(Effective May 1, 1980)* **Class D-1—nonresident mountain lion license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $100 may receive a Class D-1 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill mountain lion and possess the carcass thereof as authorized by department rules.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(19); amd. Sec. 10, Ch. 478, L. 1979.

87-2-508. *(Temporary)* **Class D-2—resident mountain lion license.** Any person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of the sum of $5 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class D-2 license which shall entitle the holder thereof to pursue, hunt, shoot, kill, and possess mountain lion as authorized by the rules and regulations of the department.

87-2-508. *(Effective May 1, 1980)* **Class D-2—resident mountain lion license.** Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of a fee of $5 may receive a Class D-2 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill mountain lion and possess the carcass thereof as authorized by department rules.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(20); amd. Sec. 11, Ch. 478, L. 1979.

87-2-509. Tagging of carcasses of game animals. (1) Every license issued by the department authorizing the holder thereof to pursue, shoot, kill, capture, take, or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers as the department prescribes. When any person takes or kills any game animal under the license, the person shall immediately thereafter cut out from the tag, coupon, or other marker the date the animal was killed or taken and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, his address, and any other information requested on the tag, coupon, or other marker. Such tag, coupon, or other marker shall be kept attached to the carcass so long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon, or other marker is attached to the game animal so killed, the same may be possessed, used, stored, and transported.

(2) It is unlawful for a person, who kills any game animal by authority of any license issued for the killing of the game animal, to fail or neglect to cut out the day and month of the kill or provide such other information as is required and attach his tag, coupon, or other marker so provided with the license issued to the carcass of the game animal or portion thereof. It is unlawful for a person to fail to keep the tag, coupon, or other marker attached to the game animal or portion thereof while the same is possessed by him.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973; amd. Sec. 28, Ch. 9, L. 1977; R.C.M. 1947, 26-202.2(3).

Part 6

Trapping Licenses

87-2-601. *(Temporary)* **Class C—trapper's license.** Any resident, as defined in 87-2-102, upon making application and paying the sum of $10 to the department, shall be entitled to a trapper's license which shall authorize the holder thereof to trap fur-bearing animals and hunt bobcat within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license.

87-2-601. *(Effective May 1, 1980)* **Class C—trapper's license.** Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, upon making application and payment of a fee of $10 to the department, may receive a Class C license which shall authorize the holder thereof to trap fur-bearing animals and hunt bobcat, wolverine, and Canada lynx within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(14); amd. Sec. 12, Ch. 478, L. 1979.

87-2-602. *(Temporary)* **Class C-1—landowner's trapping license.** Any owner or tenant or member of the immediate family of said owner or tenant, upon making application to the department and upon payment of the sum of $1, shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal on land owned or leased by him or his immediate family at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license.

87-2-602. *(Effective May 1, 1980)* **Class C-1—landowner's trapping license.** Except as otherwise provided in this chapter, any individual who owns land in this state or any tenant or member of the immediate family of said owner or tenant, upon making application to the department and payment of the fee of $1, may receive a Class C-1 license which shall entitle the holder thereof to trap any fur-bearing animal and to hunt bobcat, wolverine, and lynx on land owned or leased by him or his immediate family at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(15); amd. Sec. 13, Ch. 478, L. 1979.

87-2-603. Class C-2—nonresident trapper's license. (1) Any person not a resident as defined in 87-2-102, upon making application to the department and paying a fee of $250 to the department, is entitled to a nonresident trapper's license that authorizes the holder to trap and snare predatory animals and nongame wildlife within the state. Such trapping or snaring is permitted only after October 15 of each license year, in such manner as may be lawful under the laws of the state and the rules of the commission, and at such places as may be designated in the license.

(2) Any person not a resident whose state of residence does not sell nonresident trapper's licenses to Montanans may not be issued a Class C-2 license under subsection (1).

History: En. Sec. 2, Ch. 255, L. 1979.

Compiler's Comments

Codification. Sec. 4, Ch. 255, L. 1979, provided: "Sections 2 and 3 are intended to be codified as an integral part of Title 87, chapter 2, part 6, and the provisions contained in Title 87, chapter 2, part 6, apply to sections 2 and 3."

87-2-604. Permission of landowner required. Every holder of a Class C-2 trapper's license shall obtain written permission from the landowner, lessee, or his agent before trapping or snaring predatory animals or nongame wildlife on private property.

History: En. Sec. 3, Ch. 255, L. 1979.

Part 7

Special and Combination Licenses and Nongame Certificate

87-2-701. *(Temporary)* **Special licenses.** (1) Any resident, as defined in 87-2-102 who will be 12 years of age or older prior to September 15 of the season for which the license is issued or any person not a resident, as defined in 87-2-102, who is the holder of a Class B-2 nonresident combination license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, $25; nonresident, $125;
(b) mountain goat—resident, $15; nonresident, $75;
(c) mountain sheep—resident, $25; nonresident, $125;
(d) antelope—resident, $5;
(e) grizzly bear—resident, $25; nonresident, $125;
(f) black or brown bear—nonresident, $50.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) In the event that the number of valid resident applications for licenses exceeds the number of licenses which the department desires to issue in any hunting district, then the number of licenses issued to nonresident license holders in that hunting district shall not exceed 10% of the total issued.

87-2-701. *((Effective May 1, 1980)* **Special licenses.** (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, $25; nonresident, $150;
(b) mountain goat—resident, $15; nonresident, $150;
(c) mountain sheep—resident, $25; nonresident, $150;
(d) antelope—resident, $5; nonresident, $100;
(e) grizzly bear—resident, $25; nonresident, $150;
(f) black or brown bear—nonresident, $100.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) Special licenses shall be issued in a manner prescribed by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(13); amd. Sec. 1, Ch. 100, L. 1979; amd. Sec. 14, Ch. 478, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 100 and Ch. 478, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Although Ch. 100 and Ch. 478 differ in language usage, they do not conflict conceptually. Changes were made to incorporate the concepts of both chapters.

87-2-702. *(Temporary)* **Restrictions on special licenses.** (1) Special licenses authorized to be issued under the general powers of the department may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) A person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license is not eligible to apply for another such license for the next succeeding 7 years if such person has killed or taken an animal of the species for which the special license was issued. A person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license but did not kill or take an animal of the species for which the special license was issued is eligible to apply for another such license in any succeeding year if he returns his unused special license to the department before or at the time application is made.

(3) A person who has received a special license for elk is not eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the department, reapplication may be made by those valid license holders of the current year who may fall within these limitations.

(4) A person who has killed or taken a game animal, except a deer, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

87-2-702. *(Effective May 1, 1980)* **Restrictions on special licenses.** (1) A person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license is not eligible to apply for another such license for the next succeeding 7 years if such person has killed or taken an animal of the species for which the special license was issued. A person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license but did not kill or take an animal of the species for which the special license was issued is eligible to apply for another such license in any succeeding year if he returns his unused special license to the department before or at the time application is made.

(2) A person who has received a special permit for elk is not eligible to receive a second special permit for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game animals desired to be killed by the department, reapplication may be made by those valid license holders of the current year who may fall within these limitations.

(3) A person who has killed or taken any game animal, except a deer or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973; amd. Sec. 28, Ch. 9, L. 1977; R.C.M. 1947, 26-202.2(1), (2); amd. Sec. 15, Ch. 478, L. 1979.

87-2-703. *(Temporary)* **Special elk or deer licenses.** (1) Any person who is the holder of a valid resident elk license or a Class B-10 nonresident big game combination license may apply for a special elk license upon payment of a fee of $1.

(2) Any person who is the holder of a valid resident deer license or any nonresident who holds a Class B-2 license and a valid deer tag may apply for a special deer license upon payment of a fee of $1.

(3) The department shall have the authority to promulgate such rules and regulations as are necessary to implement this section.

87-2-703. *(Effective May 1, 1980)* **Special elk or deer permits.** (1) Any person who is the holder of a valid resident elk license or a Class B-10 nonresident big game combination license may apply for a special elk permit upon payment of a fee of $1.

(2) Any person who is the holder of a valid resident deer license or any nonresident who holds a valid nonresident deer license and a valid deer tag may apply for a special deer permit upon payment of a fee of $1.

(3) The department shall have the authority to promulgate such rules and regulations as are necessary to implement this section.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(21); amd. Sec. 16, Ch. 478, L. 1979.

87-2-704. Regulation of special elk permits. (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions;

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The department may adopt rules necessary to implement this section.

History: En. 26-202.7 by Sec. 2, Ch. 546, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.7.

87-2-705. Drawing for special elk permits. In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. Persons making valid application who did not receive a special elk permit during the season immediately preceding the drawing shall receive first preference in this drawing for first, second, and third choice hunting districts. The department may promulgate the rules necessary to implement this section.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(h).

87-2-706. Drawing for special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second, and third choice hunting districts. The department shall have the authority to promulgate such rules and regulations as are necessary to implement this section.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(g).

87-2-707. *(Temporary)* **Nonresident bear license.** The department may issue special licenses, as provided in 87-1-304, to nonresidents to hunt black or brown bear, including any color phase of black bear. The special nonresident license shall be valid only for the area designated on the license and shall expire on August 31 of each year. The fee for the special nonresident license shall be $35. There shall be a permit included with the special nonresident license to authorize the holder thereof to ship, transport, or remove out of state any bear or part thereof taken under authority of the license. **(Repealed effective May 1, 1980; Sec. 20, Ch. 478, L. 1979)**

History: En. Sec. 1, Ch. 239, L. 1965; amd. Sec. 2, Ch. 319, L. 1967; amd. Sec. 4, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.5(1).

87-2-708. *(Temporary)* **Class A-2 — special bow and arrow license.** A holder of any one of the following: a Class A-3, A-4, A-5, B-2, B-5, B-6, B-7, B-8, or B-10 license or any special license may, upon payment of an additional sum of $6 to any agent of the department authorized to issue fishing and hunting licenses, be entitle to a Class A-2 license which shall authorize the holder thereof to pursue, hunt, shoot, and kill the game animals authorized by the licenses held with bow and arrow and to possess these carcasses during special seasons and in special areas, as may be designated by the department.

87-2-708. *(Effective May 1, 1980)* **Class A-2—special bow and arrow license.** A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of $6, a Class A-2 license which shall authorize the holder thereof to pursue, hunt, shoot, and kill with bow and arrow the game animals so authorized by the licenses held and to possess the carcass thereof during seasons and in areas, as designated by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(3); amd. Sec. 2, Ch. 220, L. 1979; amd. Sec. 17, Ch. 478, L. 1979.

Compiler's Comments

Composite unnecessary. This section was amended by Ch. 220 and Ch. 478, L. 1979, but the Code Commissioner chose the language of Ch. 478 over that of Ch. 220 because the language "or any special license" added to the specific listing of licenses by Ch. 220 was obviated by the deletion of references to specific licenses in favor of a general, all inclusive reference to "a valid hunting license for which a special archery season is set by the department" by Ch. 478.

87-2-709 and 87-2-710 reserved.

87-2-711. Class AAA—sportsman's license. Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of $35, shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6, and resident conservation licenses as prescribed in 87-2-202. The department shall furnish each holder of a sportsman's license an appropriate decal.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch.

169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(18).

87-2-712. *(Temporary)* **Class B-2—nonresident combination license.** Within the limitations of this section or any department rule, any person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon the payment of $50, may apply to the fish and game office, Helena, Montana for a Class B-2 license and nonresident conservation license, as prescribed in 87-2-202, which shall authorize the holder to pursue, hunt, shoot, kill, and possess game birds and to fish with hook and line as authorized by the rules and regulations of the department and to purchase additional and special licenses and tags as provided by law or department regulation. **(Repealed effective May 1, 1980; Sec. 20, Ch. 478, L. 1979)**

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(7).

87-2-713 through 87-2-720 reserved.

87-2-721. Nongame certificate. (1) In order to promote the preservation and management of nongame wildlife within the state, the department may issue a nongame certificate or window decal indicating that the holders of the certificates are supporting the natural resource interests of the state of Montana.

(2) The form of the certificates or window decals shall be determined by the department, and the inscription upon it shall indicate that no hunting, fishing, or trapping privilege is thereby conferred.

(3) These certificates shall be sold for an annual fee of $5.

(4) The proceeds collected from the sale of the certificates shall be deposited in the fish and game fund and be expended for the management, preservation, and propagation of all species of nongame wildlife in the state of Montana.

History: En. 26-202.8 by Sec. 3, Ch. 546, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.8.

Part 8

Exceptions to License Requirements

87-2-801. Residents over sixty-two years of age. A resident, under the definition of 87-2-102, who is 62 years or older shall be entitled to fish and hunt game birds with a conservation license issued by the department for a fee of $1. The form of such license shall be prescribed by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(a).

87-2-802. Veterans in VA hospitals and residents of state institutions. Any veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, and residents of all institutions under the jurisdiction of the department of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(b).

87-2-803. Disabled persons. (1) Disabled persons are entitled to fish without a license if they are residents of Montana not residing in an institution and are certified as disabled by a medical doctor licensed to practice medicine in Montana.

(2) Disability is defined as a physical or mental condition that prevents a person from doing any substantial gainful work that is expected to last for the rest of his life.

(3) Such disabled persons shall carry a permit on a form prescribed by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(c).

87-2-804. Revocation of exception. If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by 87-2-801 through 87-2-803 shall be revoked for not less than 6 months.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(d).

87-2-805. *(Temporary)* **Persons under fifteen years of age.** (1) Minors under 15 years of age may fish for and take fish during the open season without a license. However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B, B-2, or B-3 fishing license unless the nonresident person under the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-1, A-3, and A-5 licenses at $2 per license.

87-2-805. *(Effective May 1, 1980)* **Persons under fifteen years of age.** (1) Minors under 15 years of age may fish for and take fish during the open season without a license. However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B, B-3, or B-4 fishing license unless the nonresident person under the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-1, A-3, and A-5 licenses at $2 per license.

History: (1)En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; re-en. Sec. 3691, R.C.M. 1935; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971; amd. Sec. 1, Ch. 369, L. 1975; amd. Sec. 6, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-215, R.C.M. 1947; (2)En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.1, R.C.M. 1947; R.C.M. 1947, 26-202.1(16)(e), 26-215(3); amd. Sec. 18, Ch. 478, L. 1979.

87-2-806. Taking fish or game for scientific purposes. (1) It is lawful for the duly accredited representative of an accredited school, college, university, or other institution of learning or of any governmental agency, who may be investigating a scientific subject making it necessary, to take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or state fish and game rule. He may take, kill, and capture protected or unprotected birds, fish, or animals in any way except by the explosion of dynamite. No more of the birds, fish, or animals may be taken than are necessary for the investigation.

(2) A person who desires to engage in the scientific investigation shall apply to the director for a permit. The director may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the director is satisfied of the good faith and qualifications of the applicant, he shall issue a permit which shall place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken and shall require a report of the numbers and species of animals taken by collection areas.

(3) The permittee shall pay $5 for the permit.

(4) The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are mentioned in the permit.

(5) Any representative of an accredited school, college, university, or other institution of learning who may have various students or associates assisting him throughout the year may apply to have his permit issued to himself and his associates. The associates, when carrying a copy of the permit, shall have the same authorizations and restrictions as the original applicant. The original applicant shall keep a record of all associates to whom he issued a copy of his permit and of the times for which each associate is issued a copy. The original applicant is responsible for his associates' use of the permit or copies of the permit, including their reports of species and numbers of animals collected.

History: En. Sec. 81, Ch. 173, L. 1917; re-en. Sec. 3760, R.C.M. 1921; re-en. Sec. 3760, R.C.M. 1935; amd. Sec. 27, Ch. 224, L. 1947; amd. Sec. 1, Ch. 116, L. 1973; amd. Sec. 43, Ch. 511, L. 1973; amd. Sec. 49, Ch. 9, L. 1977; R.C.M. 1947, 26-1008.

Part 9

License Agents

87-2-901. Appointment of license agents. The director may appoint license agents as needed to sell state hunting and fishing licenses and any permits or certificates prescribed by the department, according to rules adopted by the department.

History: En. Sec. 1, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 25, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 7, Ch. 421, L. 1977; R.C.M. 1947, 26-220.

87-2-902. Bond of agent and preferred claim of state for license money. (1) An appointed license agent shall furnish a corporate surety bond of $1,000 or in an amount equal to the value of the licenses, permits, and certificates received for distribution, the amount to be fixed at the discretion of the director. The bond shall secure the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all money received from the sale of hunting and fishing licenses and any permits or certificates prescribed by the department. The license agent shall properly account for all unsold licenses, permits, and certificates annually on April 1 or at any other time at the request of the director.

(2) All money received for the sale of licenses, permits, and certificates at all times belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all money owed the state.

History: En. Sec. 2, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 26, Ch. 511, L. 1973; amd. Sec. 8, Ch. 421, L. 1977; R.C.M. 1947, 26-221; amd. Sec. 7, Ch. 44, L. 1979.

87-2-903. Compensation and duties of agents. (1) License agents, except salaried employees of the department, shall receive for all services rendered the sum of 15 cents for each license, permit, or certificate issued. On or before the 10th day of each month each license agent shall submit to the department all duplicates of each class of licenses sold during the preceding month and shall accompany the duplicate licenses with all moneys received for the sale of the licenses less a fee of 15 cents for each license sold. Each license agent shall keep his license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(2) For purposes of this section, the term "license" includes any license, permit, and certificate prescribed by the department.

History: En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959; amd. Sec. 27, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 9, Ch. 421, L. 1977; R.C.M. 1947, 26-222.

87-2-904. Nontransferability of appointments — revocation and oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this part or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses and for other permits and certificates prescribed by the department.

History: En. Sec. 4, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 7, L. 1969; amd. Sec. 10, Ch. 421, L. 1977; R.C.M. 1947, 26-223; amd. Sec. 8, Ch. 44, L. 1979.

Part 10

Interstate Fishing Privileges

87-2-1001. Reciprocal fishing privileges of licensees of bordering states. (1) Any person who is properly licensed to fish in a state which borders the state of Montana and who complies with Montana fish and game laws and regulations may fish in any part of a lake, reservoir, pond, or body of water in Montana that lies within or partly within 10 miles of the boundaries of this state when such water is declared to be open to fishing by the department; provided, however, that such bordering state grants the same or similar privileges in any such body or bodies of water or in all lakes, reservoirs, ponds, or bodies of water similarly defined within its boundaries to holders of valid Montana fishing licenses and provided further that such state enters into a reciprocal agreement with Montana setting forth terms as provided by this part.

(2) The department is authorized to enter into reciprocal agreements with corresponding state officials of adjoining states for purposes of providing such reciprocal fishing privileges upon any body or bodies of water as described above. Such agreements may include provisions by which each state shall honor the license of the other state only when there is affixed to such license a stamp purchased from the honoring state, the charge for such stamp being set by mutual agreement of the states.

History: En. Sec. 1, Ch. 14, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-225.

87-2-1002. Regulation of devices and equipment used under reciprocal privilege. The department may by regulation authorize use of fishing devices and equipment by properly licensed fishermen of both states, unless otherwise prohibited by Montana law, in waters forming the subject of such agreements.

History: En. Sec. 2, Ch. 14, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-226.

87-2-1003. Bodies of water subject to reciprocal privileges. It is the primary purpose of this part to provide a method whereby the fishing opportunities afforded upon any part of any body of water located within or partly within 10 miles of the boundaries of this state may be mutually enjoyed by the residents of Montana and the residents of such adjoining states, and it is not intended to cover the waters of rivers or streams.

History: En. Sec. 3, Ch. 14, L. 1965; R.C.M. 1947, 26-227.

87-2-1004. Rules to implement reciprocal agreements. The department is authorized to establish rules for the purpose of implementing agreements established under 87-2-1001. It is unlawful to violate any orders or rules promulgated by the department under this part.

History: En. Sec. 4, Ch. 14, L. 1965; amd. Sec. 30, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-228.

CHAPTER 3

RESTRICTIONS AND REGULATIONS

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Part 1

General Provisions

87-3-101. General restrictions. It is unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot, or kill any game animal or game bird from any self-propelled or drawn vehicle or on or from any public highway in the state of Montana or by the aid or with the use of any set gun, jacklight or other artificial light, trap, snare, or salt lick; nor may any such set gun, jacklight or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301((1)(a) part).

87-3-102. Waste of fish or game. It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black, and brown bear and mountain lion, to detach or remove from the carcass only the head, hide, antlers, tusks, or teeth or any or all of aforesaid parts or to waste any part of any game animal, game bird, or game fish suitable for food or to abandon the carcass of any game animal in the field, except black and brown bear and mountain lion, which need have removed and taken from the carcass only the head or the hide of such bear or mountain lion, and except grizzly bear, which need have removed and taken from the carcass only the head and hide and such other parts as the department may demand for scientific purposes. All parts of grizzly bear demanded by the department for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide shall be returned immediately.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; re-en. Sec. 3696, R.C.M. 1935; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(1).

87-3-103. Limit on number of game animals killed. It shall be unlawful and a misdemeanor for any person to kill more than one game animal of any one species in any one license year unless the killing of more than one game animal of such species has been authorized by regulations of the department.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(2).

87-3-104. Unlawful to hunt or fish during closed season. It shall be unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird, or fish to take, hunt, shoot, kill, or capture any such game animal or such game bird or to fish for or catch any such fish.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(3).

87-3-105. Unlawful introduction of animals. It is unlawful for any person to transplant or introduce any fish or fish eggs into any body of water in the state, and it is unlawful for any person to transplant or introduce any species of game birds, game or fur-bearing animals, or nongame wildlife into the state of Montana without first having obtained authorization from the department.

History: En. Sec. 3694.3, R.C.M. 1935 by Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951; amd. Sec. 2, Ch. 113, L. 1975; amd. Sec. 37, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-344(2).

87-3-106. Hunting and fishing prohibited in fire-danger areas. (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of natural resources and conservation, closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed so long as the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered.

History: En. Sec. 1, Ch. 57, L. 1969; amd. Sec. 31, Ch. 511, L. 1973; amd. Sec. 1, Ch. 178, L. 1975; R.C.M. 1947, 26-345.

87-3-107. Use of snare lawful under certain conditions. (1) It shall be lawful to use a snare trap for the purpose of snaring any animal or bird under the following conditions:

(a) Each snare trap must be tagged with a numbered metal device identifying the owner's name, address, and telephone number.

(b) It is unlawful to set snare traps on private property without the landowner's consent.

(c) Snare traps shall be set in a manner and at a time so as not to unduly endanger livestock.

(d) A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person convicted of violating the provisions of this section is guilty of a misdemeanor.

(3) The commission may adopt rules to enforce this section.

History: En. Sec. 1, Ch. 23, L. 1933; re-en. Sec. 3725.1, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1974; amd. Sec. 1, Ch. 149, L. 1977; R.C.M. 1947, 26-504.

87-3-108. Restrictions on use of reproduced sounds. It is unlawful to use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife, except predatory animals and those birds not protected by state or federal law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(1)(b).

87-3-109 and 87-3-110 reserved.

87-3-111. Unlawful to buy, sell, possess, or transport fish or game — exceptions. It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state. The provisions of this section shall not prohibit the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof or the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game animals, game birds, game fish, or fur-bearing animals. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

History: En. Sec. 63, Ch. 173, L. 1917; amd. Sec. 1, Ch. 142, L. 1919; re-en. Sec. 3742, R.C.M. 1921; amd. Sec. 23, Ch. 77, L. 1923; amd. Sec. 28, Ch. 59, L. 1927; re-en. Sec. 3742, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1939; amd. Sec. 2, Ch. 22, L. 1941; amd. Sec. 24, Ch. 224, L. 1947; amd. Sec. 1, Ch. 146, L. 1955; R.C.M. 1947, 26-806.

87-3-112. Possession of unlawfully killed animals and of unlawful fishing implements. (1) The possession of dead bodies or any part thereof of any of the game fish, game or nongame birds, or game or fur-bearing animals defined by the fish and game laws of the state of Montana is prima facie evidence that the person or persons in whose possession the same are found have killed, caught, or taken the same. The possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession the same are found were using the same to fish.

(2) It is unlawful to possess, have, hold, purchase, keep in storage, or possess for any other purpose any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof which were unlawfully killed, captured, or taken. No person may unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork.

History: En. Sec. 43, Ch. 173, L. 1917; re-en. Sec. 3725, R.C.M. 1921; amd. Sec. 26, Ch. 192, L. 1925; amd. Sec. 21, Ch. 59, L. 1927; amd. Sec. 1, Ch. 41, L. 1931; re-en. Sec. 3725, R.C.M. 1935; amd. Sec. 18, Ch. 224, L. 1947; amd. Sec. 40, Ch. 9, L. 1977; R.C.M. 1947, 26-503.

87-3-113. Removal of illegally taken animals or parts of animals from state. It is unlawful for any person or persons to possess or to ship or take out of the state any illegally taken game or nongame birds, fish, game animals, fur-bearing animals, the skins of fur-bearing animals, or any parts thereof, whether taken within or coming from without the state.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R.C.M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927; re-en. Sec. 3730, R.C.M. 1935; amd. Sec. 19, Ch. 224, L. 1947; amd. Sec. 1, Ch. 38, L. 1963; amd. Sec. 42, Ch. 9, L. 1977; R.C.M. 1947, 26-701.

87-3-114. Labeling of packages. All shippers of fish, game or nongame birds, game animals, fur-bearing animals, the skins of fur-bearing animals or predatory animals, or parts thereof are required to label all packages offered for shipment by parcel post, common carrier, or otherwise. The label shall be securely attached to the address of the package and shall plainly indicate the names and addresses of the consignor and consignee and the complete contents of the package.

History: En. Sec. 54, Ch. 173, L. 1917; re-en. Sec. 3733, R.C.M. 1921; amd. Sec. 22, Ch. 77, L. 1923; amd. Sec. 28, Ch. 192, L. 1925; amd. Sec. 25, Ch. 59, L. 1927; re-en. Sec. 3733, R.C.M. 1935; amd. Sec. 20, Ch. 224, L. 1947; amd. Sec. 43, Ch. 9, L. 1977; R.C.M. 1947, 26-704.

87-3-115. Violation by carriers. No person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company may transport or receive for transportation or carriage or sell or offer for sale any of the game animals, game or nongame birds, fish, fur-bearing animals, the skins of fur-bearing animals, or parts thereof, except as specifically provided for by 87-3-114. All game or nongame birds, fish, game animals, fur-bearing animals, or parts thereof had in possession or which have been shipped or are being transported in violation of any of the provisions of 87-3-113 through 87-3-115 shall be seized, confiscated, and disposed of as provided by law.

History: En. Sec. 55, Ch. 173, L. 1917; re-en. Sec. 3734, R.C.M. 1921; amd. Sec. 26, Ch. 59, L. 1927; re-en. Sec. 3734, R.C.M. 1935; amd. Sec. 21, Ch. 224, L. 1947; amd. Sec. 44, Ch. 9, L. 1977; R.C.M. 1947, 26-705.

87-3-116 through 87-3-120 reserved.

87-3-121. Bag limit prizes unlawful — exception. (1) It shall be unlawful for any person, firm, corporation, association, or club to offer or give any prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fish, fowl, fur-bearing animals, or any fish, bird, or animal now or that shall be hereafter protected in any way by the fish and game laws of the state of Montana.

(2) This section shall not be construed to prohibit the award of prizes for any one game bird, fish, or fur-bearing animal on the basis of size, quality, or rarity.

History: En. Sec. 1, Ch. 82, L. 1935; re-en. Sec. 3744.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1974; R.C.M. 1947, 26-809.

87-3-122. Spotlighting unlawful. (1) It is unlawful for any person or one or more of a group of persons together to throw or cast the rays of a spotlight having a luminance of greater than .75 candlepower attached to or cast from a motorized vehicle into any field, pasture, woodland, forest, or prairie wherein wildlife or domestic livestock may be or may be reasonably expected to be while having in his possession or their possession or under control a firearm or other implement whereby any wildlife or domestic animal could be killed by aid of an artificial light.

(2) (a) All officers authorized to enforce the game and livestock laws of the state of Montana and all landowners, lessees, or their agents, while on their own lands in connection with their legitimate activities, and employees of such landowners, lessees, and agents are exempt from the provisions of this section.

(b) The provisions of this section do not apply where the headlights of a motor vehicle, operating and proceeding in a normal manner on any highway or roadway, cast a light upon such animal on or adjacent to the highway or roadway and there is no intent or attempt to locate that animal.

(3) A person convicted of violating subsection (1) of this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; re-en. Sec. 3691, R.C.M. 1935; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971; amd. Sec. 1, Ch. 369, L. 1975; amd. Sec. 6, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-215(1), (2), (4).

87-3-123. Use of silencers or mufflers on firearms forbidden. No person may take into a field or forest or have in his possession while out hunting any device or mechanism devised to silence, muffle, or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(3).

87-3-124. Restrictions on hunting with dogs. (1) (a) Except as provided in 87-3-127, no person may chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog or dogs. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) Any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses any dog attacking or killing hooved game animals may destroy that dog without criminal or civil liability.

(2) The department shall have authority to allow and regulate the use of dogs for hunting mountain lion and bobcat.

History: (1)En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; Sec. 26-301, R.C.M. 1947; (2)En. Sec. 1, Ch. 184, L. 1971; amd. Sec. 4, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-303.5, R.C.M. 1947; R.C.M. 1947, 26-301(part (5)(a)), (5)(b), 26-303.5.

87-3-125. Restrictions on use of motor vehicles while hunting. (1) No person, while hunting game animals or game birds, may use a motor-driven vehicle other than on an established road or trail unless he has reduced a big game animal to possession and cannot easily retrieve the big game animal. In that case a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted such permission. After the retrieval, the motor-driven vehicle is to be returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail.

(2) No person, while hunting game animals or game birds, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle.

(3) No person, while hunting game animals or game birds, may drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the landowner and is in possession of the hunter.

(4) It is unlawful for a person to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife, except predators of this state, providing that this subsection does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(5) The restrictions in subsections (1) through (3) on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(8), (9).

87-3-126. Restrictions on use of aircraft or boats. (1) No game birds or game or fur-bearing animals may be killed, taken, or shot at from any aircraft including helicopters; nor may any aircraft or helicopter be used for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game or migratory birds or game or fur-bearing animals; nor may any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.

(2) It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any game or fur-bearing animals and communicate the location thereof to any person on the ground by means of any air-to-ground communication signal or device whatsoever as an aid to hunting or pursuing wildlife.

(3) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports which have been established on private property or which have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply during emergency situations or when search and rescue operations are being conducted or for predator control as permitted by the department of livestock.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch.

201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(2).

87-3-127. Taking of stock-killing animals. (1) Livestock owners or employees of the department or the federal fish and wilflife service may use dogs in pursuit of stock-killing bears, stock-killing mountain lions, and stock-killing bobcats. Other means of taking stock-killing bears, stock-killing mountain lions, and stock-killing bobcats may be used except the use of the deadfall.

(2) Traps used in capturing bears shall be inspected twice each day with the inspections 12 hours apart.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(part (5)(a)).

87-3-128. Exceptions — department personnel. The provisions of this chapter relating to methods of herding, driving, capturing, taking, locating, or concentrating of fish, game animals, game birds, or fur-bearing animals do not apply to the department or to any employee thereof while acting within the scope and course of the powers and duties of the department.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; R.C.M. 1947, 26-301(10); amd. Sec. 9, Ch. 44, L. 1979.

87-3-129. Exception in cases of extreme hunger. When it is shown that any violation of the provisions of this title was for the purpose of preventing great suffering by hunger of any person which could not otherwise have been avoided, the provisions of this title shall not apply to the case.

History: En. Sec. 79, Ch. 173, L. 1917; re-en. Sec. 3758, R.C.M. 1921; re-en. Sec. 3758, R.C.M. 1935; amd. Sec. 25, Ch. 9, L. 1977; R.C.M. 1947, 26-1006.

Part 2

Fish

87-3-201. Department control over fish hatcheries. The department has full control of all state fish hatcheries and is responsible for their construction, maintenance, and operation. All that construction work done under contract or otherwise shall be done under control and supervision of the director. The department shall administer the taking and collecting of all spawn, the hatching of all spawn and eggs, and the rearing, propagation, and distribution of fry, fingerlings, and fish. The department may purchase as many eyed eggs as are necessary to keep the hatcheries of the state supplied with eggs and in full operation. The department shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply the hatcheries and for that purpose may build, equip, and use fish traps and nets at any time of the year in all public waters. The department may purchase the eyed eggs of fish not propagated in this state for the purpose of stocking the waters of this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R.C.M. 1921; amd. Sec. 10, Ch. 192, L. 1925; re-en. Sec. 3666, R.C.M. 1935; amd. Sec. 4, Ch. 81, L. 1951; amd. Sec. 15, Ch. 511, L. 1973; R.C.M. 1947, 26-117.

87-3-202. Supervision over fish hatcheries by director. The director has general supervision over all fish hatcheries in the state. The output of all hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution. Distribution shall be under the direction of the department subject to an official order of the director. The director may exchange spawn or fish with other states or persons for distribution in this state.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R.C.M. 1921; amd. Sec. 8, Ch. 192, L. 1925; re-en. Sec. 3664, R.C.M. 1935; amd. Sec. 2, Ch. 81, L. 1951; amd. Sec. 15, Ch. 177, L. 1965; amd. Sec. 14, Ch. 511, L. 1973; R.C.M. 1947, 26-115.

87-3-203. Restrictions on use of fish as bait. The department may prohibit the use of small fish as bait for catching fish in such waters as the department designates. It may promulgate such other rules as are necessary to insure an adequate supply of fish in such waters and may regulate fishing from boats or other floating devices and the use of fishing lures or baits in all waters of the state.

History: En. Sec. 3694.3, R.C.M. 1935 by Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951; amd. Sec. 2, Ch. 113, L. 1975; amd. Sec. 37, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-344(1).

87-3-204. Restrictions on fishing methods. (1) No game fish may be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any such set gun, trap, or other device to entrap game fish be used, made, or set.

(2) It is unlawful for a person to take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; to take or catch fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or to take or catch fish by means of the use of fishtraps, grabhooks, seines, nets, or other similar means for catching fish.

(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the

department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.

(4) The taking of black bass in Flathead Lake may be permitted by the department.

(5) The department shall have the power to designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the department may designate the number of hooks and lines and the length of line or lines which may be used as setlines.

(6) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish with longbow and arrow when the department declares an open season when paddlefish may be taken by longbow and arrow;

(c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified; or

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in such waters as may be designated by the department.

History: Ap. p. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; Sec. 26-301, R.C.M. 1947; Ap. p. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R.C.M. 1921; amd. Sec. 16, Ch. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; re-en. Sec. 3714, R.C.M. 1935; amd. Sec. 1, Ch. 44, L. 1959; amd. Sec. 2, Ch. 90, L. 1969; amd. Sec. 1, Ch. 8, L. 1971; amd. Sec. 36, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-332, R.C.M. 1947; R.C.M. 1947, 26-301(part (1)(a)), (6), (7), 26-332; amd. Sec. 1, Ch. 50, L. 1979.

87-3-205. Unlawful to possess net or seine — exceptions. (1) It is unlawful for any person or persons to have in their possession or under their control any seine, net, or other similar device for capturing fish. A seine or net found in any vehicle, at the camp, or on the premises of any person shall be prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying said camp or premises.

(2) Nothing contained herein shall apply to:

(a) the owners of private fish ponds, as defined under the statute;

(b) a person or persons having unexpired seine or net license, as provided for in the statutes of Montana;

(c) the use, by any person, of a landing net in connection or in addition to pole, line, and hooks in fishing for game fish; or

(d) the possession of traps, seines, or nets where found in the vicinity of any waters which the department has designated within the state where traps, seines, or nets may be used for the taking of nongame fish and Dolly Varden trout, as provided for in the statutes of Montana.

History: **En. Sec. 25, Ch. 173, L. 1917; re-en. Sec. 3716, R.C.M. 1921; amd. Sec. 1, Ch. 113, L. 1933; re-en. Sec. 3716, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-334.**

87-3-206. Unlawful to use explosives or poisons in taking fish. (1) If any person or persons shall use any carbide, lime, giant powder, dynamite, or other explosive compounds or any corrosive or narcotic poison or other deleterious substance or have any of the same in his possession within 100 feet of any stream where fish are found for the purpose of catching, stunning, or killing fish, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

(2) The provisions of this section shall not apply to anyone duly authorized by the department to conduct lake or stream surveys or to control undesirable or overpopulated species of fish.

History: **En. Sec. 26, Ch. 173, L. 1917; re-en. Sec. 3717, R.C.M. 1921; amd. Sec. 24, Ch. 192, L. 1925; amd. Sec. 1, Ch. 82, L. 1933; re-en. Sec. 3717, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1949; amd. Sec. 1, Ch. 114, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-335.**

87-3-207. Unlawful to place caged fish in public waters — exception. It shall be unlawful for any person, firm, or corporation to place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by department regulation.

History: **En. Sec. 1, Ch. 126, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-813.**

87-3-208. Regulation of placing of caged fish. The department shall have the authority to regulate the placing of caged fish in public waters to protect the recreational and aesthetic use of such water from pollution, excessive private use, and the introduction of disease.

History: **En. Sec. 2, Ch. 126, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-814.**

87-3-209 through 87-3-220 reserved.

87-3-221. Importation of salmonid fish or eggs unlawful — exception. It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless such importations are shipped direct from the hatchery where reared to destination and a written certification is provided that the importation or source is free of such infectious organisms as the department may specify. Such certification shall be made in the state of origin by a fish pathologist designated for this purpose by the United States secretary of the interior or by the state fish, wildlife, and parks director. Certification of the source may be by inspection of the hatchery of origin conducted annually or at such other times as the state fish, wildlife, and parks director may order. A copy of the certification shall accompany each shipment.

History: **En. Sec. 1, Ch. 10, L. 1969; amd. Sec. 1, Ch. 37, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1701; amd. Sec. 2, Ch. 218, L. 1979.**

87-3-222. When certification unnecessary. (1) Nothing in 87-3-221 through 87-3-224 shall restrict the importation and transportation of dead salmonid fish or eggs when such fish or eggs have been processed or prepared in a manner whereby such infectious organisms as the department may specify have been killed.

(2) Salmon caught and brought directly into North America and transported into Montana for processing or sale or any salmonid caught wild in North America shall be exempt from the requirement for certification.

History: En. Sec. 2, Ch. 10, L. 1969; amd. Sec. 2, Ch. 37, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1702.

87-3-223. Authorization for rules and personnel. The department may promulgate such rules and regulations and may employ such personnel for testing and inspection as are necessary to carry out the provisions of 87-3-221 through 87-3-224.

History: En. Sec. 4, Ch. 10. L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1704.

87-3-224. Enforcement. The cargo and vehicle involved in a violation of 87-3-221 through 87-3-223 may, at the option of the department, either be denied the right to proceed further within the state of Montana or be quarantined until inspected by a designated biologist from the department. The department shall inform the department of highways of the provisions regarding importation of salmonid fish and eggs so that the department of highways may enforce such provisions at ports of entry and checking stations under 60-2-303.

History: En. Sec. 5, Ch. 10, L. 1969; amd. Sec. 3, Ch. 37, L. 1974; amd. Sec. 52, Ch. 9, L. 1977; R.C.M. 1947, 26-1705.

Part 3

Game Animals

87-3-301. Shotgun loads regulated by department. No person may use a shotgun to hunt, kill, or shoot deer except with loads as specified by the department.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; R.C.M. 1947, 26-301(4).

87-3-302. Colored garments required on big game hunters. (1) It is unlawful for any person to hunt any of the big game animals in this state or to accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without the person wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) "Hunter orange" means a daylight fluorescent orange color.

(3) This section does not apply to any person hunting with a bow and arrow during the special archery season.

(4) The department shall make rules to implement this section.

(5) Any person convicted of a violation of any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $10 or more than $20.

History: (1) thru (4)En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961; amd. Sec. 1, Ch. 305, L. 1971; amd. Sec. 1, Ch. 20, L. 1974; amd. Sec. 10, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-302, R.C.M. 1947; (5)En. Sec. 2, Ch. 74, L. 1937; amd. Sec. 2, Ch. 20, L. 1974; Sec. 26-303, R.C.M. 1947; R.C.M. 1947, 26-302, 26-303.

87-3-303. Policy toward nonresident big game hunters. It shall be the policy of this state to protect and preserve game animals primarily for the citizens of this state and to avoid the deliberate waste of wildlife and destruction of property by nonresidents licensed to hunt in this state.

History: En. Sec. 1, Ch. 229, L. 1965; R.C.M. 1947, 26-303.1.

87-3-304. Landowner's permission required for big game hunting. Every resident and nonresident must have obtained permission of the landowner, lessee, or their agents before hunting big game animals on private property.

History: En. Sec. 3, Ch. 229, L. 1965; R.C.M. 1947, 26-303.3.

87-3-305. Unlawful to take deer within city or town boundaries. It is unlawful to shoot, kill, take, or cause to be shot, killed, taken, or captured or to attempt to shoot, kill, take, or capture any deer within the boundaries of any incorporated or unincorporated city or town of this state.

History: En. Sec. 2, Ch. 123, L. 1933; re-en. Sec. 3697.1, R.C.M. 1935; amd. Sec. 2, Ch. 465, L. 1977; R.C.M. 1947, 26-315.

87-3-306. Unlawful to destroy evidence of sex. It is unlawful for any person killing a big game animal within this state to destroy evidence of the sex of the big game animal so killed so as to make the determination of the sex thereof uncertain.

History: En. Sec. 16a, Ch. 238, L. 1921; amd. Sec. 3698, R.C.M. 1921; amd. Sec. 18, Ch. 192, L. 1925; re-en. Sec. 3698, R.C.M. 1935; amd. Sec. 7, Ch. 224, L. 1947; amd. Sec. 1, Ch. 99, L. 1949; amd. Sec. 33, Ch. 9, L. 1977; R.C.M. 1947, 26-317.

87-3-307. Contests based on size of game animals unlawful. (1) Except as provided in this section, it is unlawful for any person, as defined in 87-2-101, to conduct or sponsor in any manner a contest in which a prize is offered to a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, having the longest body, or any similar contest based upon the size or weight of a game animal or part of a game animal.

(2) This section does not apply to recognition given by the nationally established and recognized Boone and Crockett trophy institute.

History: En. Sec. 1, Ch. 133, L. 1961; amd. Sec. 47, Ch. 9, L. 1977; R.C.M. 1947, 26-811.

Part 4

Game Birds

87-3-401. Restrictions on rifles for bird hunting. Rifles may not be used to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(part(1)(a)).

87-3-402. Unlawful to violate closed season on certain game birds. It is unlawful for any person to hunt, shoot, kill, capture, possess, or cause to be hunted, killed, or captured or attempt to shoot, kill, or capture any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey until such time as the department shall provide an open season on any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey.

History: En. Sec. 18, Ch. 238, L. 1921; re-en. Sec. 3700, R.C.M. 1921; amd. Sec. 10, Ch. 77, L. 1923; amd. Sec. 20, Ch. 192, L. 1925; amd. Sec. 14, Ch. 59, L. 1927; re-en. Sec. 3700, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 3, Ch. 465, L. 1977; R.C.M. 1947, 26-319.

87-3-403. Migratory game birds — closed season and bag limits. Laws relating to migratory birds are prescribed by the regulations of the United States department of interior and the fish and wildlife service. Open season, bag limit, and other rules and regulations are announced each year by proclamation by the president of the United States. After each proclamation, the department by proper action will adopt, advertise, and enforce such proclaimed regulations as may be applicable to the state of Montana. Any person or persons violating any provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided by law.

History: En. Sec. 20, Ch. 238, L. 1921; re-en. Sec. 3703, R.C.M. 1921; amd. Sec. 13, Ch. 77, L. 1923; amd. Sec. 16, Ch. 59, L. 1927; re-en. Sec. 3703, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1941; amd. Sec. 1, Ch. 113, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-320.

87-3-404. Tagging of turkey. Every person who shall take or kill any turkey shall immediately thereafter attach to the leg of said turkey the proper tag which has been validated by the holder thereof by complying with instructions on said tag.

History: En. Sec. 2, Ch. 35, L. 1959; R.C.M. 1947, 26-511.

87-3-405. Failure to tag turkey. It is unlawful for any person who kills, captures, or possesses any wild turkey by authority of any turkey tag or permit to fail or neglect to attach his tag to the turkey or fail to validate his tag by filling out or punch marking the tag as required and fail to keep the tag attached while the same is possessed by him.

History: En. Sec. 3, Ch. 35, L. 1959; amd. Sec. 41, Ch. 9, L. 1977; R.C.M. 1947, 26-512.

Part 5

Fur-Bearing Animals

87-3-501. Open and closed season for fur-bearing animals — exception. (1) It shall hereafter be unlawful and a misdemeanor for any person to shoot, trap, kill, or capture or cause to be shot, trapped, killed, or captured or to attempt to shoot, trap, kill, or capture any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx, or black-footed ferret until such time as the commission shall provide an open season on any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx, or black-footed ferret. The furs and hides of such animals legally taken during the open season may be possessed, bought, and sold at any time except as hereinafter provided.

(2) When it is shown that muskrats or beaver are doing severe injury upon or are a menace to the structures, canal banks, or other works of an irrigation project or district or stock water pond, any employee or resident landowner on such project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks, or other works of such project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the director a permit so to do, except that from June 1 to August 31, both dates inclusive, of each year no such permit shall be required.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(1st part).

87-3-502. Trapping and tagging marten. (1) Any person trapping marten during the open season thereon shall present all skins or pelts of marten so taken to the game warden residing in the district where the pelts were taken and shall furnish an affidavit giving his name, residence, license number, the date and place of capture, and the number of marten so taken. If the warden is satisfied of the legal taking of the same, he shall attach a numbered metal tag to each skin covered by the affidavit. No charge shall be made for tags, and the pelts so tagged may be bought, sold, or transported at any time within the state of Montana, but no marten skin shall be exported in any manner from the state without the shipper first obtaining a shipping permit from the director or game warden, the application for which shall show the number on the metal tags attached to said marten skins.

(2) Any person who shall receive or bring into from without the state any marten skin or skins with a numbered metal tag of another state or untagged marten skins coming from without the state where the state in which the marten skins were caught does not require that metal tags be attached before shipment shall report their arrival within 10 days to the director and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated from the tags and the name of the state so tagging the same. It shall not be necessary for such skins to be retagged with a Montana tag or any other fees paid therefor.

(3) It shall be a misdemeanor, punishable as hereinafter provided, for any person to remove any tag from such skins or to buy, sell, or transport

untagged marten skins, except as provided in this section, or fail to have tags attached to marten skins, as herein provided, within 20 days of the expiration date of the open season thereon.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(2nd part).

87-3-503. Destruction of beaver and muskrat houses unlawful. It shall be unlawful and punishable, as in this part provided, for any person at any time to willfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver except that this shall not prohibit trapping in the house of muskrats when the commission shall authorize such trapping.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part).

87-3-504. Metal tags required on traps. Any person trapping fur-bearing animals or predatory animals for their pelts shall fasten a metal tag to all such traps bearing in legible English the name and address of the trapper, except that no tag shall be required on traps used by landowners trapping with permit on their own land and irrigation ditch right-of-way contiguous to the land.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part).

87-3-505. Penalty. Any person violating any of the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part).

87-3-506. Wasting of fur-bearing animals. (1) A person who fails to pick up traps or snares at the end of the trapping season or attends his traps or snares so that fur-bearing animals are wasted is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(2) The department of fish, wildlife, and parks shall enforce the provisions of this section.

(3) Federal, state, and county predator control programs are exempt from this section.

History: En. Secs. 1, 2, 3, Ch. 629, L. 1979.

CHAPTER 4

COMMERCIAL ACTIVITIES

Part 1 — Outfitters and Guides

Section

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Part 1

Outfitters and Guides

87-4-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Advisory council" means the Montana outfitters' council provided for in 2-15-3403.

(2) "License year" means that period commencing May 1 and ending April 30 of the next year.

(3) "Nonresident" means a person other than a resident.

(4) "Outfitter" means any person, persons, company, or corporation who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) aids or assists any person in locating or pursuing any game animal.

(5) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

(6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(7) "Resident guide" means a resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation.

History: Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908.

87-4-102. Determination of what constitutes consideration. The providing of the services, property, or equipment mentioned in 87-4-101(4) shall be conclusively presumed to have been for consideration for the purposes of this part if the same or any thereof are provided by any person, company, or corporation for more than two parties or two other persons during any calendar year or on more than two occasions during any such calendar year.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; R.C.M. 1947, 26-904(2).

87-4-103. Responsibility for violations of law. (1) Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of the law; any such outfitter or employee of such outfitter who shall willfully fail to or refuse to report any violation of the law shall be liable to the penalties as herein provided. If any professional guide commits any violation of the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter then employing such guide, the outfitter is legally responsible for such violation for all purposes under the laws or regulations if the outfitter fails to report any such violation to proper authority.

(2) No person may hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R.C.M. 1921; re-en. Sec. 3750, R.C.M. 1935; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975; R.C.M. 1947, 26-906.

87-4-104. Powers and duties of department relating to outfitters and guides. The department shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current year. The costs of publication of the pamphlet shall be paid from the earmarked revenue fund, fish and game account.

(2) cooperate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) establish a minimum of two meetings annually with the advisory council;

(4) consult with the advisory council to develop policy concerning the administration of outfitting;

(5) designate a warden or ex officio warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations.

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-911.

87-4-105. Outfitters' council. The council shall have the authority and duty to make recommendations to the department and the director as to:

(1) outfitter standards;

(2) rules of procedures and rules to effectuate this part, including but not limited to rules prescribing all requisite qualifications for license. These qualifications shall include training, experience, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment.

(3) hearings and proceedings to suspend or revoke licenses of outfitters and guides and to recommend suspension or revocation of licenses for due cause;

(4) any reasonable rules, not in conflict with this part, necessary for safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public.

History: En. Sec. 5, Ch. 221, L. 1971; amd. Sec. 39, Ch. 511, L. 1973; amd. Sec. 18, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-912.

87-4-106. Authorization for rules. The department may adopt, promulgate, and enforce rules recommended by the advisory council as provided in 87-4-105 and all other rules it may consider proper for the administration and enforcement of the provisions of this part and the regulation of outfitting and guiding to provide for the services to the public.

History: En. Sec. 6, Ch. 221, L. 1971; amd. Sec. 19, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-913.

87-4-107 through 87-4-120 reserved.

87-4-121. License required — services performed — standards. (1) No person may act as an outfitter, professional guide, or resident guide or advertise as an outfitter without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by any person or a resident guide takes out nonresident friends, the outfitter or resident guide shall keep and submit records as required by the department.

(3) Outfitters and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an outfitter.

(4) Outfitters and resident guides utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter or resident guide intends to operate and shall comply with environmental protection standards established for these lands.

(5) An outfitter may not willfully and substantially misrepresent his facilities, prices, equipment, services, or hunting.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients.

History: En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-914.

87-4-122. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal thereof shall, in the opinion of the director, meet the following qualifications:

(1) be a person of at least 18 years of age, in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform his duties as an outfitter;

(2) be a citizen of the United States and a resident of Montana for a full 2 years, unless the residency requirement is waived by the department;

(3) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients (all equipment and facilities shall be subject to inspection at all reasonable times and places by the department or its designated agent);

(4) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated thereunder as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution thereof;

(5) have not been convicted or forfeited bond of $100 or more on more than one violation of the fish and game laws of any state or the United States within the past 5 years;

(6) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's or guide's license from the state of Montana;

(7) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(8) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or guide during the license year immediately preceding that for which the application is made;

(9) have not committed any negligent act or misconduct while acting as an outfitter or guide which negligence or misconduct caused a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide during the license year immediately preceding that for which the application is made;

(10) have not, at any time, been convicted of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold an outfitter's license during any period of time in which a deferred sentence has been imposed for a felony.

(11) have substantially complied with all department regulations and state and federal laws concerning outfitters and guides, if the applicant has previously held a license as an outfitter or guide.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k).

87-4-123. Professional guide's qualifications. (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age, in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform his duties as a professional guide;

(b) be a citizen of the United States and a resident of Montana as defined in 87-4-101;

(c) be endorsed and recommended by an outfitter with a valid license.

(2) A resident guide shall have been issued a valid resident wildlife conservation license.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5).

87-4-124. Application. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the department which shall include:

(a) the applicant's full name, address, and telephone number;

(b) the address of his principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application is involved;

(d) the experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed that the guide is in fact to be employed by such outfitter and stating that the outfitter recommends the applicant for his qualifications;

(f) a statement by a warden to the director that the equipment listed on the application has been inspected by the warden and that the same is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;

(g) a statement of the maximum number of guests to be taken at any one time;

(h) the written approval of the rangers in whose district he will establish hunting camps, if the applicant intends to outfit on a national forest.

(2) Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of this part; any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

(3) Application shall be made to and filed with the director.

(4) Only one application for an outfitter's or guide's license may be made any one license year. If any application is denied, subsequent applications by

the same applicant for the license year involved are void, except as provided in 87-4-129.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13).

87-4-125. Outfitter's examination. Each applicant for an outfitter's license shall pass a standard examination administered by the director or an agent designated by him, which examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(1) fish and game laws and regulations;
(2) practical woodsmanship;
(3) general knowledge of big game;
(4) field preparation of trophies;
(5) care of game meat;
(6) use of outfitter's gear as shown on the application;
(7) knowledge of area and terrain;
(8) knowledge of firearms;
(9) federal and state regulations as applicable to outfitting;
(10) practical first aid.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(l).

87-4-126. Residence requirements — waiver and reciprocity. (1) Residence requirements for procuring an outfitter's license are waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana, except for fee.

(2) For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(6), (7).

87-4-127. Fees. (1) Applications shall be accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied:

(a) resident outfitter's license fee $50;
(b) resident professional guide's fee $15;
(c) nonresident outfitter's license fee $150;
(d) nonresident professional guide's fee ....$100.

(2) A resident guide's license is a valid Montana wildlife conservation license.

(3) If the nonresident resides in a state requiring residents of the state of Montana to pay in excess of such amounts for a similar license, the fee for such nonresident outfitters or guides shall be the same amount as the higher fee charged in the state where the nonresident resides. All fees collected under this part shall be deposited as provided in 87-1-601.

(4) The license fee shall be used to investigate the applicant, to enforce this part, and for administrative costs.

History: Ap. p. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-915, R.C.M. 1947; Ap. p. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977; Sec. 26-917, R.C.M. 1947; R.C.M. 1947, 26-915(8) thru (11), 26-917.

87-4-128. Investigation of applicant — issuance or denial of license. (1) The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's license and an applicant's qualifications as he considers advisable.

(2) The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this part but is exempt from having to retake the written examination.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(12).

87-4-129. Kinds of licenses. (1) After receipt of the application and when all the conditions and requirements of this part have been satisfied, the director shall issue either of the following licenses, depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 87-4-101; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license.

(2) The license shall be in the form prescribed and shall be valid for the licensing year in which issued.

(3) If the application is denied, the director shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1).

87-4-130. Professional guide's license. (1) For the purposes of this part, a person may serve as a professional guide under his employer's license, after submitting his application with the proper license fee, until the license is issued or for 10 days after notification of the rejection of the license.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3).

87-4-131. Transfer or amendment of outfitter's license. (1) No outfitter's license may be transferred during any license year.

(2) An individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding the license for the use and benefit of a named partnership or corporation.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4).

87-4-132. Limit one license. No person may hold more than one outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation, nor may the name of any partnership or corporation appear on more than one current outfitter's license.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5).

87-4-133. Expiration of license. Notwithstanding any other provision or law, a license shall expire on the last day of the license year for which it was issued.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(6).

87-4-134 through 87-4-140 reserved.

87-4-141. Grounds for suspension or revocation of license. Every license or right to apply for and hold such license may be suspended or revoked upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) conviction of a felony, until civil rights are restored or until time of any deferred sentence for a felony has expired;

(5) two convictions or bond forfeitures of $100 or more as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States;

(6) a substantial breach of any contract with any person utilizing the services of the license holder provided that such breach is established as a matter of final judgment in a court of law;

(7) the willful employment of an unlicensed guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or guide which negligence or misconduct causes a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide.

History: En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977; R.C.M. 1947, 26-918.

87-4-142. Procedure for suspension or revocation of license — reissuance. (1) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based, and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the director. Thereupon, the director shall initiate a preliminary investigation of all facts in connection with the charge.

(2) A copy of all information shall be transmitted to the advisory council. The advisory council may make recommendation as to the action to be taken. Any such recommendation shall be made in writing and delivered to the director within 20 days after date of transmittal of such information to the council.

(3) If the accusation be deemed to be unfounded or trivial, the director shall dismiss the same and will advise the licensee charged and the complaining party of the action. Should the director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the commission that the same be approved and the revocation or suspension be effected.

(4) The director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved not less than 20 days prior to the day set for hearing thereon, which said hearing shall be before the commission at a time and place set by such commission. At the hearing, the licensee involved may be represented by counsel. After full, fair, and impartial hearing, the commission may suspend the accused's license or his right to hold a license for a period not to exceed 3 years, may order the license revoked, or may dismiss the charge or recommendation based upon the facts shown at the hearing.

(5) A revoked or suspended license may be reissued or reinstated at the discretion of the commission.

History: En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977; R.C.M. 1947, 26-919.

87-4-143. Appeal procedure. Any person who feels aggrieved by the denial of issuance of a license or suspension or revocation of a license as an outfitter or guide may appeal to the district court of the county of his residence within 30 days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission, and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo, and upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper. If the commission or the court has ordered a stay of any revocation or suspension and the commission's revocation or suspension is thereafter sustained by the court, the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the commission.

History: En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977; R.C.M. 1947, 26-920.

87-4-144. Enforcement. The warden or ex officio warden designated by the department to primarily administer outfitting and guiding laws and rules, other wardens, and all peace officers shall enforce this part.

History: En. Sec. 14, Ch. 221, L. 1971; amd. Sec. 40, Ch. 511, L. 1973; amd. Sec. 24, Ch. 9, L. 1977; R.C.M. 1947, 26-921.

Part 2

Taxidermists

87-4-201. Taxidermist's license, fee, and penalty. A person who engages in conducting any taxidermy business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving, or preparing any of the dead bodies of any wildlife or any part thereof must first obtain from the director a taxidermist's license and pay an annual license fee of $15 therefor. Such person shall keep a written record of all the articles of wildlife in his possession or control, the kind and number of each, by whom owned, and the residence of owner, all the articles of wildlife shipped and to whom and where shipped. The above record shall be kept for as long as such articles remain in the possession of the licensee but in any event at least 5 years. These records shall be open to inspection by any state game warden at any reasonable time. In all cases of conviction of violation of this section, the license of the person convicted may be revoked by the court.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R.C.M. 1921; amd. Sec. 24, Ch. 77, L. 1923; re-en. Sec. 3751, R.C.M. 1935; amd. Sec. 26, Ch. 224, L. 1947; amd. Sec. 1, Ch. 12, L. 1959; amd. Sec. 1, Ch. 10, L. 1974; amd. Sec. 48, Ch. 9, L. 1977; amd. Sec. 1, Ch. 129, L. 1977; R.C.M. 1947, 26-907.

Part 3

Fur Dealers

87-4-301. Fur dealers defined. (1) Any person or persons, firm, company, or corporation engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of any animal or animals designated by the laws of Montana as fur-bearing or predatory animals shall be deemed a fur dealer within the meaning of this part.

(2) If such fur dealer resides in or if his or its principal place of business is within the state of Montana, he or it shall be deemed a resident fur dealer. All other fur dealers shall be deemed nonresident fur dealers.

History: En. Sec. 1, Ch. 42, L. 1929; re-en. Sec. 3778.3, R.C.M. 1935; R.C.M. 1947, 26-1301.

87-4-302. Records and inspection. (1) A fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) the number and kind of all skins or pelts purchased or sold by the fur dealer;

(b) the place where the skins or furs were killed or trapped and a separate record of all the skins or pelts as were killed or trapped outside this state;

(c) the trapping license number under which the furs or pelts were taken in cases where a trapper's license is required;

(d) the names and addresses of the persons to whom the skins or pelts were sold or from whom they were purchased.

(2) This book shall be open at all reasonable times to the inspection of the director or any warden or any United States game warden and shall be preserved and accessible for 1 year after the expiration of any license granted to the fur dealer.

History: En. Sec. 2, Ch. 42, L. 1929; re-en. Sec. 3778.4, R.C.M. 1935; amd. Sec. 47, Ch. 511, L. 1973; R.C.M. 1947, 26-1302.

87-4-303. Persons required to have fur dealer's license. A fur dealer shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within this state, secure a fur dealer's license from the director. No license is required for a hunter or trapper selling skins or pelts which he has lawfully taken or for a person not a fur dealer who purchases skins or pelts exclusively for his own use and not for sale.

History: En. Sec. 3, Ch. 42, L. 1929; re-en. Sec. 3778.5, R.C.M. 1935; amd. Sec. 48, Ch. 511, L. 1973; R.C.M. 1947, 26-1303.

87-4-304. License classification and fees. (1) The following classes of licenses shall be issued and the following fees charged therefor:

(a) resident fur dealer's license, $10;
(b) nonresident fur dealer's license, $50;
(c) fur dealer's agent's license, $10.

(2) Any person who is employed by a resident or nonresident fur dealer as a traveling fur buyer shall be deemed a fur dealer's agent. A fur dealer's agent's license may be issued to any person who is employed as a fur buyer by a licensed resident or licensed nonresident fur dealer, providing that it shall be the responsibility of each and every fur dealer and fur dealer's agent to have the proper license before buying or dealing in furs as defined by 87-4-301.

History: En. Sec. 4, Ch. 42, L. 1929; re-en. Sec. 3778.6, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1941; amd. Sec. 1, Ch. 188, L. 1945; R.C.M. 1947, 26-1304.

87-4-305. Issuance and expiration of licenses. The license required by this part shall be issued annually and shall expire on April 30 of each year, and no reduction in the fee charged for said license shall be made in any case where said license runs for less than 1 year.

History: En. Sec. 5, Ch. 42, L. 1929; re-en. Sec. 3778.7, R.C.M. 1935; R.C.M. 1947, 26-1305.

87-4-306. Violations. No person, firm, company, or corporation may violate any of the provisions of this part.

History: En. Sec. 6, Ch. 42, L. 1929; re-en. Sec. 3778.8, R.C.M. 1935; amd. Sec. 33, Ch. 224, L. 1947; amd. Sec. 51, Ch. 9, L. 1977; R.C.M. 1947, 26-1306.

Part 4

Game Farms

87-4-401. Game or fur farm permit — not applicable to migratory birds. (1) Any person or persons, firm, company, or corporation before engaging in the business or occupation of propagating, owning, and controlling game animals (except buffalo), game birds (except migratory game birds), or fur-bearing animals of the state of Montana shall first procure a game or fur farm permit from the director.

(2) Such game or fur farm permit shall be issued to responsible applicants who own or lease the premises on which their operations are to be conducted when such applicant has so fenced the place where such game or fur farm is located, with fencing material approved by the director, so that no wild or public animals of like species can mix with those confined.

(3) The owning, controlling, propagating, salvage, banding, transportation, shipping, import, export, acquisition, and scientific collecting of migratory game birds shall be in compliance with regulations of the department adopted pursuant to 87-3-403.

(4) Game farm or fur farm permits issued under the provisions of this section shall be valid during the time such game or fur farm is operated and conducted according to law.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-402. Breeding for foundation stock. (1) Foundation stock for a fur farm may be obtained from the department by a free permit authorizing game farm permit holders to capture a designated number of fur-bearing animals, with the exception of beaver or marten, for breeding stock under such rules and regulations as the department shall prescribe. Such fur-bearing animals captured under permit shall not be sold or pelted for the period of 1 year after their capture, and the skins or pelts of any fur-bearing animals accidentally killed during their capture or for the period of 1 year thereafter shall be turned over to the director.

(2) A charge shall be made for the capture of each beaver or marten by fur farm permit holders for foundation stock under authorization of the director as follows:

(a) beaver, $15 each;

(b) marten, $25 each.

(3) The skins, pelts, or products of such beaver and marten on game or fur farms shall be tagged individually with tags purchased from the department for a fee of 5 cents each.

(4) Any person or persons, firm, company, or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana shall apply for and be issued free of charge a numbered certificate of identification for such fur farm, which certificate shall be nontransferable and valid for the life of the business, provided no other provisions of 87-4-401 through 87-4-405 shall be construed to or shall in any manner affect such person or persons, firm, company, or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-403. Inspection of game or fur farm. Each game farm or fur farm shall be open to complete inspection by the state fish, wildlife, and parks director or his wardens at any reasonable time, inclusive of the whole area thereof, all stock thereon, and all structures, pens, and other devices thereon.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; R.C.M. 1947, 26-1201(part); amd. Sec. 2, Ch. 218, L. 1979.

87-4-404. Annual reports. On or before January 31 of each year a report shall be submitted by the licensee to the director showing the numbers and species of game or fur-bearing animals on hand on January 1 preceding and the number and kinds of animals pelted, bought, or sold during the year.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-405. Trespass forbidden. Any person or persons, except as herein provided, who, at any time, in any part of the state of Montana, without the consent of the owner or caretaker of any enclosure within which fur-bearing animals are kept for breeding purposes and on the fence of which enclosure are kept posted notices forbidding trespassing on the premises where the animals are kept (which notices must be plainly discernible at a distance of not less than 25 yards therefrom), shall pass within the fence or such enclosure or climb over, break, or cut through the same for the purpose of entering the enclosure, etc., or for any other purpose whatsoever shall be guilty of a misdemeanor and liable to the penalty hereinafter provided.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

Part 5

Shooting Preserves

87-4-501. Authorization for licenses, permits, rules, and regulations. The department is hereby authorized and empowered to issue operating licenses or permits for shooting preserves, which may be privately owned and operated, and to make such rules and regulations as may be necessary and proper in carrying out the purposes of this part.

History: En. Sec. 1, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1601.

87-4-502. Size, location, and posting of preserves. Operating licenses or permits may be issued to any person, partnership, association, or corporation for the operation of shooting preserves that meet the requirements hereinafter prescribed:

(1) Each shooting preserve shall be restricted to not more than 1,280 contiguous acres and shall not be located closer than 10 miles from another preserve and in areas which will not substantially reduce hunting areas available to the public as determined by the department.

(2) The exterior boundaries of each shooting preserve shall be clearly defined and posted with signs erected around the extremity at intervals of 250 feet or less.

History: **En. Sec. 2, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1602.**

87-4-503. Fees. Fees for shooting preserve licenses or permits shall be $50 per year for the first 160 acres of shooting preserve area, plus $20 per year for each additional 160 acres or parts thereof.

History: **En. Sec. 4, Ch. 265, L. 1965; R.C.M. 1947, 26-1604.**

87-4-504. Bird license required. All persons hunting on shooting preserves must have a valid resident or nonresident game bird license.

History: **En. Sec. 11, Ch. 265, L. 1965; R.C.M. 1947, 26-1611.**

87-4-505. Commercial and membership licenses and permits. Each shooting preserve license or permit issued by the department shall designate whether or not the preserve is open to the public on a commercial basis or is restricted to a membership or other limited group. In the latter case, the license or permit shall specify that the area is a restricted shooting preserve. The department shall maintain accurate listings of the names, addresses, and the location of the property of all persons to whom shooting preserve licenses or permits are issued. Said lists shall be made available in their entirety to anyone requesting same and shall specify whether the preserves are public or private.

History: **En. Sec. 12, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1612.**

87-4-506. Revocation of license or permit and reissuance. The department may revoke any shooting preserve license or permit issued under the authority of this part when the licensee has violated any of the provisions of this part or any rule or regulation of the department. After such revocation, a new license or permit may be issued if in the discretion of the department the circumstances so warrant.

History: **En. Sec. 13, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1613.**

87-4-507 through 87-4-520 reserved.

87-4-521. Duration of season. In order to give a reasonable opportunity for a fair return on a sizeable investment, the season established for shooting preserves shall be no less than 120 consecutive days, as designated by the department, during the 4-month period beginning September 1 and ending December 31.

History: **En. Sec. 7, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1607.**

87-4-522. Game hunted in preserve. (1) Game which may be hunted under this part shall be confined to artificially propagated pheasants, quail, chukar partridges, turkeys, and such other species as the department may add from time to time.

(2) A minimum number of stock of each species to be hunted on a shooting preserve shall be released on the licensed area during the shooting preserve season. The minimum number of stock of each species to be released shall be determined by the department before the commencement of the season.

History: **En. Sec. 3, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1603.**

87-4-523. Amount of game recoverable. The operating licenses or permits issued by the department shall entitle holders thereof and their members, guests, or patrons to recover not more than 80% of the total number of each species of game released on the premises each year.

History: En. Sec. 5, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1605.

87-4-524. Preserve operators to establish shooting restrictions. Except for required compliance with the game recovery restriction provided in 87-4-523, shooting preserve operators may establish their own shooting limitations and restrictions on the age, sex, and number of each species that may be taken by each person.

History: En. Sec. 6, Ch. 265, L. 1965; R.C.M. 1947, 26-1606.

87-4-525. Tagging of game. All harvested game shall be tagged with a self-sealing tag prior to being either consumed on the premises or removed therefrom, such tags to remain affixed until the game actually is prepared for consumption. The department shall furnish tags at nominal cost to shooting preserve operators, the tags to be numbered consecutively and dated by year of issuance.

History: En. Sec. 8, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1608.

87-4-526. Registration of shooters. Each shooting preserve operator shall maintain a registration book listing the names, addresses, and hunting license numbers of all shooters; the date on which they hunted; the amount of game and the species taken; and the tag numbers affixed to each carcass. An accurate record likewise must be maintained of the total number, by species, of game raised and/or purchased and the date and number of all species released. These records shall be open to inspection by a delegated representative of the department at any reasonable time and shall be the basis upon which the game-recovery limits in 87-4-523 shall be determined.

History: En. Sec. 9, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1609.

87-4-527. Wild game on preserve. Any wild game found on shooting preserves may be harvested in accordance with applicable game and hunting laws pertaining to open seasons, bag and possession limits, and so forth, as are established regularly by the department and the U.S. fish and wildlife service.

History: En. Sec. 10, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1610.

87-4-528. Unscheduled inspections by department. The department shall conduct unscheduled inspections of all shooting preserves licensed under this part to ensure that pertinent statutes as well as the rules and regulations of the department are being followed and obeyed.

History: En. Sec. 14, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1614.

Part 6

Fish Ponds, Seining, and Export of Aquatic Insects

87-4-601. Sale of fish or spawn unlawful — exceptions. (1) Except as provided in subsection (2), no person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners thereof;

(b) the taking of fish by the state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes; or

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department.

History: En. Sec. 21, Ch. 173, L. 1917; re-en. Sec. 3713, R.C.M. 1921; re-en. Sec. 3713, R.C.M. 1935; amd. Sec. 11, Ch. 224, L. 1947; amd. Sec. 35, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-331; amd. Sec. 1, Ch. 52, L. 1979.

87-4-602. Seining licenses. The director shall keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and the date of revocation if the license is revoked. The director shall pay all fees received for those licenses into the state treasury to the credit of the fish and game moneys in the earmarked revenue fund. A license may not be issued to a person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917; re-en. Sec. 3715, R.C.M. 1921; re-en. Sec. 3715, R.C.M. 1935; amd. Sec. 30, Ch. 511, L. 1973; R.C.M. 1947, 26-333.

87-4-603. Fish pond license for artificial lake or pond. (1) A person who owns or lawfully controls an artificial lake or pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock his fish pond with fry procured from any lawful source. The department may designate the species of fish which may be released in the pond when there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, he shall furnish a corporate surety bond to the state for $500, conditioned to the effect that he will not sell fish or spawn from any of the public waters of this state and also conditioned to the effect that he will report to the director the quantity of fish, fish eggs, and spawn taken from the lake or pond. This report shall be made under oath annually during the month of January. A record of all transactions must be kept showing the species and numbers or pounds of fish sold, number and species of eggs sold, number and species of fry sold, name of person or persons to whom sold, and the date of transaction.

(2) "Artificial lake or pond" as used in this section does not include a natural pond or body of water created by natural means or any portion of the streambed or lakebed thereof. It includes only bodies of water created by artificial means or diversion of water which do not exceed 500 acres of surface area.

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R.C.M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; re-en. Sec. 3695, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1949; amd. Sec. 28, Ch. 511, L. 1973; amd. Sec. 32, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-306.

87-4-604. Commercial exportation of aquatic insects unlawful. (1) It is unlawful for any person to ship or take out of the state any aquatic insects for speculative purposes, for market, or for sale.

(2) This section does not apply to aquatic insects caught in private ponds by the owners thereof.

History: En. Sec. 1, Ch. 13, L. 1965; amd. Sec. 45, Ch. 9, L. 1977; R.C.M. 1947, 26-708.

87-4-605. Records and report of whitefish sales by fishing license holders. A holder of a fishing license who catches whitefish for speculative purposes, for market, or for sale shall keep a record and make an annual report to the department of the number of whitefish sold and the date of each sale. The annual report shall be submitted to the appropriate department regional office within 15 days of the end of the license year.

History: En. Sec. 2, Ch. 52, L. 1979.

Compiler's Comments

Codification instructions. Sec. 3, Ch. 52, L. 1979, provided: "Section 2 of this act is intended to be codified as an integral part of Title 87, chapter 4, part 6, and the provisions of Title 87, chapter 4, part 6, apply to section 2 of this act."

Part 7

Sale of Game in Commercial Trade

87-4-701. Definitions. (1) The words "game" and "game birds" or "parts of the same" mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana.

(2) The words "merchant", "hotelkeeper", or "restaurant keeper" mean each manager, servant, agent, or employer of such person.

(3) The word "sale", as used in the statute laws of this state touching the sale of game and fish, the sale of which is prohibited by law, does and shall be considered to mean:

(a) a contract by which, for a pecuniary consideration called a price, one transfers an interest in either game or fish;

(b) a contract by which, for an article or thing of value, one transfers, barters, or exchanges an interest either in game or fish.

History: (1), (2)En. Sec. 62, Ch. 173, L. 1917; re-en. Sec. 3741, R.C.M. 1921; amd. Sec. 30, Ch. 192, L. 1925; re-en. Sec. 3741, R.C.M. 1935; amd. Sec. 15, Ch. 9, L. 1977; Sec. 26-805, R.C.M. 1947; (3)En. Sec. 64, Ch. 173, L. 1917; re-en. Sec. 3743, R.C.M. 1921; re-en. Sec. 3743, R.C.M. 1935; Sec. 26-808, R.C.M. 1947; R.C.M. 1947, 26-805, 26-808.

87-4-702. Possession of game by merchants, hotelkeepers, or restaurant keepers. It is lawful for any merchant, hotelkeeper, or restaurant keeper to have in his possession, offer for sale, or sell game and game birds, provided the game or game birds are not killed in Montana.

History: En. Sec. 58, Ch. 173, L. 1917; re-en. Sec. 3737, R.C.M. 1921; re-en. Sec. 3737, R.C.M. 1935; amd. Sec. 13, Ch. 9, L. 1977; R.C.M. 1947, 26-801.

87-4-703. Evidence of lawful possession of game. Each merchant, hotelkeeper, or restaurant keeper, having in his possession and offering for sale any game or game birds, shall produce upon demand, for the inspection of any game warden, deputy game warden, or sheriff, the receipt or record and shipping and transportation receipts required in 87-4-704 to be kept by him. A failure or refusal to produce the same upon demand, coupled with the possession and offering for sale of game or game birds, is prima facie evidence of the violation of this part.

History: En. Sec. 59, Ch. 173, L. 1917; re-en. Sec. 3738, R.C.M. 1921; re-en. Sec. 3738, R.C.M. 1935; amd. Sec. 14, Ch. 9, L. 1977; R.C.M. 1947, 26-802.

87-4-704. Record to be kept. It shall be the duty of every person having in his possession and offering for sale any game or game birds to keep a record showing the amount and kind of game and game birds received by him, together with shipping and transportation receipts showing the true time and place of shipment of said game and game birds and the name of the person shipping same; provided, however, that any merchant in Montana selling game or game birds to any hotel or restaurant keeper or other person shall, in addition to the record and receipts heretofore required to be kept by him, keep a record of the date of sale, kind and amount of game or game birds and the name of the purchaser and provided, further, that in the case of hotel and restaurant keepers or other persons buying game or game birds from a merchant within the state of Montana, a receipt from the said merchant showing the date, amount and kind of game or game birds purchased shall be sufficient evidence of compliance with the provisions of this part by such hotel or restaurant keeper or other person.

History: En. Sec. 60, Ch. 173, L. 1917; re-en. Sec. 3739, R.C.M. 1921; re-en. Sec. 3739, R.C.M. 1935; R.C.M. 1947, 26-803.

87-4-705. Noncompliance with law. It is unlawful for any person to have in his possession and offer for sale or sell any game or game birds without having complied with the provisions of 87-4-704 relating to the keeping of a record and shipping and transportation receipts.

History: En. Sec. 61, Ch. 173, L. 1917; re-en. Sec. 3740, R.C.M. 1921; re-en. Sec. 3740, R.C.M. 1935; amd. Sec. 23, Ch. 224, L. 1947; amd. Sec. 46, Ch. 9, L. 1977; R.C.M. 1947, 26-804.

Part 8

Menageries and Zoos

87-4-801. Definitions. As used in this part unless the context requires otherwise, the following definitions apply:

(1) "Roadside menagerie or zoo" means any place where one or more wild animals, including birds, reptiles, and the like, are kept in captivity for the evident purpose of exhibition or attracting trade. It does not include the exhibition of any animal by an educational institution or in a zoological garden chartered as a nonprofit corporation by the state and does not include animals exhibited by any traveling theatrical exhibition or circus.

(2) "Wild animal" means an animal wild by nature as distinguished from the common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

History: En. Sec. 1, Ch. 130, L. 1969; amd. Sec. 45, Ch. 511, L. 1973; R.C.M. 1947, 26-1205.

87-4-802. Department regulations. The department shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding, and sanitation of animals kept in roadside menageries and for the protection of the public from injury by such animals.

History: En. Sec. 2, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1206(2).

87-4-803. Permits. (1) The department shall grant permits for roadside menageries or zoos. It is unlawful for any person to operate a roadside menagerie without a permit. Application for a permit shall be made to the director on a form prescribed by him. The annual permit fee for five or less animals shall be $10. The annual permit fee for more than five animals shall be $25. Permits shall expire on December 31 but may be renewed upon payment of the annual fee. This section shall not apply to the United States, the state of Montana, or any county or city. Any person who shall subscribe to any false statement in application for a permit shall be guilty of a misdemeanor.

(2) No permit shall be granted by the department until it has satisfactorily verified that the provisions for housing and caring for such animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.

(3) A permit is not transferable to another person unless the roadside menagerie or zoo to which it pertains is also transferred to the same person. The director's approval must be obtained prior to such permit transfer and prior to a transfer of any wild animals held under the permit.

History: En. Secs. 2, 3, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1206(1), 26-1207.

87-4-804. Permit to obtain wild animals. (1) It is unlawful to obtain wild animals for a menagerie or zoo by capture from the wild or by purchase except in accordance with the terms of a permit. Application for such permit shall be made to the director on a form prescribed by him. After investigation by the department, the director may issue such permit without charge if he finds:

(a) that all provisions of this part and of the department regulations are complied with by the applicant; and

(b) that the number and species of wildlife desired is not excessive under the circumstances.

(2) If wild animals are to be obtained by capture, the permit shall designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana. Nongame animals may be bought, sold, or transferred under such regulations as the department may prescribe.

History: En. Sec. 4, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1208.

87-4-805. Restrictions on menagerie permits — offspring state property. A menagerie permit cannot be construed as a commercial game propagating permit, and the holder of such permit must not under any circumstances sell or attempt to sell any of the original game birds or game animals or the progeny thereof. A game propagating permit is required to propagate and sell game birds and game animals for commercial purposes. A fur-farming permit is required to propagate and sell fur-bearing animals. All offspring of game animals, game birds, or fur-bearing animals are the property of the state wherein the menagerie is located and must be disposed of by the state.

History: **En. Sec. 5, Ch. 130, L. 1969; R.C.M. 1947, 26-1209.**

87-4-806. Inspection, permit revocation, and redemption of wildlife. All roadside menageries or zoos and all equipment used in connection therewith shall be open to inspection at all reasonable hours. If upon inspection it is found that the menagerie or zoo is not being operated in accordance with this part or with the department regulations, the director shall revoke the permit without right of renewal and shall redeem possession of all wildlife obtained by capture or unlawful propagation.

History: **En. Sec. 6, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1210.**

87-4-807. Enforcement and penalty. (1) The provisions of this part shall be enforced by any warden or any other legally authorized officer. Any person violating the provisions of this part shall upon conviction be punished as provided in 87-1-102, and at the discretion of the court, the permit and all rights and privileges inherent therein may be forfeited.

(2) Any animals being kept in violation of any section of this part may be confiscated or ordered disposed of at the discretion of the director. The permittee may appeal to the commission within 20 days of the date of the order to confiscate, and the commission shall hold a hearing on such an appeal, and the decision of the commission shall be final.

History: **En. Sec. 7, Ch. 130, L. 1969; amd. Sec. 5, Ch. 465, L. 1977; R.C.M. 1947, 26-1211.**

87-4-808. Fines, bonds, penalties, and fees. Fines, bonds, or penalties shall be administered and disposed of in accordance with the provisions of 87-1-601. Fees obtained under this part shall be deposited with the state treasurer and credited to the earmarked revenue fund, fish and game account.

History: **En. Sec. 8, Ch. 130, L. 1969; amd. Sec. 46, Ch. 511, L. 1973; R.C.M. 1947, 26-1212.**

CHAPTER 5

WILDLIFE PROTECTION

Part 1 — Nongame and Endangered Species

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Part 1

Nongame and Endangered Species

87-5-101. Short title. This part shall be known and may be cited as "The Nongame and Endangered Species Conservation Act".

History: En. Sec. 1, Ch. 461, L. 1973; R.C.M. 1947, 26-1801.

87-5-102. Definitions. As used in this part, the following definitions apply:

(1) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(2) "Endangered species" means any species or subspecies of wildlife actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

(3) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including but not limited to research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(4) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

(5) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(6) "Person" means any individual, firm, corporation, association, or partnership.

(7) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(8) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts thereof.

History: En. Sec. 2, Ch. 461, L. 1973; amd. Sec. 12, Ch. 417, L. 1977; R.C.M. 1947, 26-1802(3), (part (4)), (5) thru (10).

87-5-103. Legislative policy. The legislature finds and declares all of the following:

(1) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as members of ecosystems;

(2) that species or subspecies of wildlife indigenous to this state which may be found to be endangered within the state should be protected in order to maintain and to the extent possible enhance their numbers;

(3) that the state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless such actions will assist in preserving or propagating the species or subspecies.

History: En. Sec. 3, Ch. 461, L. 1973; R.C.M. 1947, 26-1803.

87-5-104. Investigations by department. The department shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. The department shall conduct ongoing investigations of nongame wildlife.

History: **En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(part).**

87-5-105. Regulations to manage nongame wildlife. (1) On the basis of the determinations made pursuant to 87-5-104, the department shall issue management regulations. Such regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to 87-5-104 through 87-5-106, giving their common and scientific names by species and subspecies. The department may from time to time amend such regulations on the approval of the legislature by adding or deleting therefrom species or subspecies of nongame wildlife.

(2) The department shall by such regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife. The department may make such changes in the proposed regulations as are consistent with effective management of nongame wildlife as designated by the legislature.

History: **En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(part).**

87-5-106. Unlawful acts. Except as provided in regulations issued by the department, it shall be unlawful for any person to take, possess, transport, export, sell, or offer for sale nongame wildlife deemed by the department to be in need of management. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the department to be in need of management.

History: **En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(3).**

87-5-107. List of endangered species. (1) (a) On the basis of investigations on nongame wildlife provided for in 87-5-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations but not later than 1 year after July 1, 1973, the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state which are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department shall have authority to recommend that the legislature include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix A), as such list may be modified hereafter.

(2) The department shall conduct a review of the state list of endangered species within not more than 2 years from its effective date and every 2 years thereafter. The department shall request the legislature to amend the list by

such additions or deletions as are deemed appropriate and at such times as are deemed appropriate.

(3) Except as otherwise provided in this part, it shall be unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States' list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as such list may be modified hereafter.

(4) Any species or subspecies of wildlife appearing on any of the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) In the event the United States' list of endangered native fish and wildlife is modified subsequent to July 1, 1973, by additions or deletions, such modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department recommends and the legislature accepts such modification for the state.

History: **Ap. p. Sec. 5, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-1805, R.C.M. 1947; Ap. p. Sec. 2, Ch. 461, L. 1973; amd. Sec. 12, Ch. 417, L. 1977; Sec. 26-1802, R.C.M. 1947; R.C.M. 1947, 26-1802(part (4)), 26-1805.**

87-5-108. Establishment of programs. (1) The director shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife. The department shall establish such policies as are necessary to carry out the purpose of this section and 87-5-109.

(2) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under this section and 87-5-109 or utilized for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purposes of this section and 87-5-109. The governor shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section and 87-5-109.

History: **En. Sec. 6, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1806(1) thru (3).**

87-5-109. Taking of species for educational, scientific, or other purposes. (1) The director may permit the taking, possession, transportation, exportation, or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(2) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured, or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department. Endangered species may be removed, captured, or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture, or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the department pursuant to 87-5-104.

History: **En. Sec. 6, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1806(4), (5).**

87-5-110. Department to issue regulations. The department shall issue such regulations as are necessary to carry out the purposes of this part.

History: **En. Sec. 7, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1807.**

87-5-111. Enforcement and penalty. (1) Any person who violates the provisions of this part or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.

(2) Upon a first conviction for a violation under this part, the court may fine the defendant not to exceed $250. Upon a second such conviction, the defendant may be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 30 days, or both. Upon subsequent such convictions, the defendant shall be fined not less than $500 or more than $1,000 and in addition may be imprisoned in the county jail for any term not to exceed 6 months.

(3) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this part.

(4) Wildlife seized under the provisions of this part shall be held by an officer or agent of the department pending disposition of court proceedings and thereafter be forfeited to the state for disposition as the director may deem appropriate. Prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The department is authorized to issue regulations to implement this subsection.

History: **En. Sec. 8, Ch. 461, L. 1973; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1808.**

87-5-112. Construction. None of the provisions of this part shall be construed to apply retroactively or to prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale, or shipment of any wildlife whose species or subspecies is deemed to be threatened with statewide extinction in this state but not in the state where originally taken, if the person engaging therein demonstrates by substantial evidence that such wildlife was lawfully taken or removed from such state; provided that this subsection shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of wildlife on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), except as permitted in the provision by 87-5-107(3) and (4) and 87-5-109(1).

History: En. Sec. 9, Ch. 461, L. 1973; R.C.M. 1947, 26-1809(1).

Part 2

Wild Birds — Regulation of Raptors

87-5-201. Protection of wild birds and their nests and eggs. It is unlawful for a person to hunt, capture, kill, possess, purchase, offer or expose for sale, ship, or transport any wild bird, other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or to take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license, or permit issued by the director. This section does not apply to the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, magpies, and other birds the department designates or to the taking or destruction of their nests and eggs.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R.C.M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; re-en. Sec. 3723, R.C.M. 1935; amd. Sec. 16, Ch. 224, L. 1947; amd. Sec. 2, Ch. 309, L. 1971; amd. Sec. 33, Ch. 511, L. 1973; amd. Sec. 38, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.

87-5-202. Definition of raptors. "Raptors", when used in this part, means all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(1).

87-5-203. Regulation of raptors. A person may not at any time hunt, capture, kill, possess, purchase, offer or expose for sale, or transport a raptor except as provided in this part.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(2).

87-5-204. License and rules for falconry. (1) The department may adopt specific rules for the keeping of records and for the trapping, taking, possession, or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry. It is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.

(2) The fee for a falconry license is $3 a year or any part of a year. A license expires April 30 each year.

(3) A license may not be issued to a person under the age of 12 years.

(4) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds shall have in possession a valid resident or nonresident game bird license.

(5) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department.

History: **En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(3), (5), (6), (13), (14).**

87-5-205. Restrictions on species allowed for falconry. (1) The peregrine falcon (Falco peregrinus), bald eagle (Haliaeetus leucocephalus), golden eagle (Aquila chrysaetos), and osprey (Pandion haliaeetus) may not be captured in this state for the sport of falconry.

(2) Species of raptors which are native to North America may be brought into Montana for the purpose of falconry unless that action is specifically prohibited by this part, the laws of other states, or the rules of the federal government. Those raptors may be possessed, subject to this part. A person bringing a raptor into this state must be able to show proof of the area of origin.

History: **En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(4), (7).**

87-5-206. Restrictions on taking, possessing, and selling raptors. (1) A licensee may not at any time possess more than three raptors, including those that have been imported.

(2) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by department rules) or by traps or nets which are humane in their operation and use. Not more than one young may be taken from one nest by a permittee or permittees, and at least one young must be left in the nest. The department may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This subsection does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit that activity. Trapping raptors is permitted only between September 1 and February 1.

(3) A licensee may not transfer ownership or possession of a raptor taken or possessed under the provisions of this part without notifying the department within 10 days after the date of transfer.

(4) A person may not sell or offer for sale Montana raptors in this state. A person may not transport raptors out of the state except by permit issued by the department.

History: **En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(8), (9), (12), (15).**

87-5-207. Restrictions on use of raptors. (1) Raptors may not be used to intentionally flush or harass big game.

(2) Raptors may not be loosed intentionally at protected mammals and birds. Game bird limits and all seasons and other rules relating to game birds must be obeyed.

History: **En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(10), (11).**

87-5-208. Nonresidents allowed raptors in state. Nonresidents who are working, attending schools, or otherwise living temporarily in the state of Montana may obtain a Montana falconry license and bring raptors, legally acquired in other states or countries, into the state of Montana. Such nonresidents shall be allowed to hunt with falcons in the state of Montana subject to all Montana laws and rules.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(16).

87-5-209. Destruction of eagles or predatory hawks and owls. Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(17).

Part 3

Grizzly Bear and Wild Buffalo

87-5-301. Policy toward grizzly bear. It is hereby declared the policy of the state of Montana to protect, conserve, and manage grizzly bear as a rare species of Montana wildlife.

History: En. Sec. 1, Ch. 134, L. 1969; R.C.M. 1947, 26-307.2.

87-5-302. Commission regulations on grizzly bear. The commission shall have authority to provide open and closed seasons; means of taking; shooting hours; tagging requirements for carcasses, skulls, and hides; possession limits; and requirements for transportation, exportation, and importation of grizzly bear.

History: En. Sec. 2, Ch. 134, L. 1969; R.C.M. 1947, 26-307.3.

87-5-303. Wild buffalo protected. It is unlawful to hunt, shoot, kill, capture, or possess wild buffalo except as permitted by rules adopted by the department.

History: En. Sec. 4, Ch. 167, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-301.1.

Part 4

Game Preserves and Closed Areas

87-5-401. Creation of game preserves and general provisions. (1) There are game preserves within the state for the better protection of all the game animals and birds within their limits. Except as provided in this section, no person may, within the limits of a game preserve created by the legislature or by the commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds, or to carry firearms may be issued by the director upon the payment of the fee and in accordance with rules established for the preserve by the commission.

History: **En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R.C.M. 1921; re-en. Sec. 3761, R.C.M. 1935; amd. Sec. 28, Ch. 224, L. 1947; amd. Sec. 1, Ch. 31, L. 1949; amd. Sec. 44, Ch. 511, L. 1973; amd. Sec. 50, Ch. 9, L. 1977; R.C.M. 1947, 26-1101.**

87-5-402. Posting of notice and additional provisions. (1) Preserves, refuges, sanctuaries, rest grounds, or closed districts made or created by said department and any land or water areas or portions thereof closed by said department shall be conspicuously posted for a period of 20 days, with posters setting forth their purposes and the penalties for violating the orders and rules and regulations of the department applicable to them. Not less than 20 days before any fish and game district, closed district, preserve, refuge, sanctuary, or rest ground, so created by said department, or closure of land or water areas becomes effective, publication shall be made as provided in 87-1-202 of the boundaries of such fish and game district, closed district, preserve, refuge, sanctuary, or rest ground, so created by said department, such boundaries to be accurately designated by definite topographic monuments or public land survey.

(2) The hunting, pursuing, capturing, killing, or taking of any fish, game animals, game birds, or fur-bearing animals in violation of the rules, regulations, or orders of the department governing any closed season, fish and game district, refuge, sanctuary, preserve, rest ground, or closed land or water area promulgated by said department shall be punishable with the same penalties as provided for the violation of the state fish and game laws of this state regarding closed seasons.

(3) All game preserves or refuges heretofore created are continued in full force and effect until such time as the same are changed by the department in the manner herein designated. Said department shall have the right, power, and authority, when properly petitioned, to alter and change the boundaries of or entirely do away with and abandon any preserve or refuge, excepting the Sun River game preserve, when, in the opinion of said department, it is to the best interest so to do.

History: **En. Sec. 27, Ch. 193, L. 1921; re-en. Sec. 3676, R.C.M. 1921; amd. Sec. 1, Ch. 87, L. 1933; re-en. Sec. 3676, R.C.M. 1935; amd. Sec. 1, Ch. 145, L. 1937; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-127.**

87-5-403. Sun River game preserve. There is a Sun River game preserve described as follows: beginning at a point on the continental divide of the Rocky Mountains, due south of the head or source of the south fork of the north fork of Sun River, in what will be, when surveyed, section 8, township 18 north of range 10 west, Montana meridian; thence due north from the crest of the continental divide to the head of the south fork of the north fork of Sun River; thence northerly along and down the course of the south fork of the north fork of Sun River as it winds and turns to its confluence with the north fork of the north fork of Sun River; thence northerly along the course of the north fork of the north fork of Sun River as it winds and turns to its head or source; thence due north to the crest of the continental divide of the Rocky Mountains; thence along the crest of the continental divide of the Rocky Mountains southwesterly and southerly to the place of beginning, intending hereby to include in said game preserve all that territory lying between the south fork of the north fork and the north fork of the north fork of Sun River on the east and the continental divide of the Rocky Mountains on the west.

History: En. Sec. 1, Ch. 34, L. 1913; re-en. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3763, R.C.M. 1921; re-en. Sec. 3763, R.C.M. 1935; amd. Sec. 26, Ch. 9, L. 1977; R.C.M. 1947, 26-1102.

87-5-404. Flathead Lake bird preserve. (1) Those certain islands, two in number, including lot one of block one, containing two and fifty-seven hundredths acres; lot two of block one, containing two and sixty hundredths acres; lot one of block two, containing one and sixty-five hundredths acres, all being in the villa site of islands situated in Flathead Lake in the county of Flathead, Montana, according to the official plat and survey of said land returned to the general land office by the surveyor general, be and the same are hereby made a perpetual place of refuge for birds of all kinds, the same to be called and known as "Flathead Lake bird preserve", which said lands shall be specially reserved for the breeding, propagating, and protection of all species of birds.

(2) It shall be unlawful for any person to kill, shoot, capture, or destroy or in any way injure any bird on said islands or to interfere with their eggs or nests or to shoot at, wound, or kill any bird within a distance of 400 yards from the shoreline of said islands.

(3) It shall be unlawful for any person to kill, shoot, capture, or destroy or in any way injure any bird or animal on the university of Montana biological reserve located on the east shore of Flathead Lake or to interfere with their eggs or their young or their nests or to shoot at, wound, or kill any bird or any animal within 400 yards of said university of Montana biological reserve or to discharge any firearms on said reserve or within 400 yards thereof.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3768, R.C.M. 1921; re-en. Sec. 3768, R.C.M. 1935; R.C.M. 1947, 26-1107.

87-5-405. Teton-Spring Creek bird preserve. For the better protection and propagation of birds, the following described area in Teton County, state of Montana, is hereby set aside and established as a state bird preserve, to be known as the Teton-Spring Creek bird preserve: All of sections 2, 3, 4, 9, 10, 11, 12, 13, 14, and 15 in township 24 north, range 5 west.

History: En. Sec. 1, Ch. 33, L. 1923; re-en. Sec. 3776.3, R.C.M. 1935; R.C.M. 1947, 26-1116.

87-5-406. Gates of the Mountains game preserve. (1) Beginning in section 2, township 12 north, range 3 west, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of said upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon road, then northerly along the powerline to said beacon, then along the bulldozer road to the point of the ridge in section 23, township 13 north, range 3 west, then northerly to the Missouri River, then easterly across said river and lake to the forest service boundary to the wilderness boundary, then south following the wilderness boundary to the southeast corner of section 1, township 12 north, range 3 west, then west back to the upper Holter Lake to the point of beginning, intending hereby to include in said game preserve all that territory adjacent to the Gates of the Mountains area, shall be called and known as the Gates of the Mountains game preserve.

(2) It shall be unlawful for any person to shoot, kill, capture, or destroy or in any way injure any bird or fur-bearing animal in said area or to interfere with their eggs or nests or to shoot at, wound, or kill any bird or fur-bearing animal within said preserve. Said area shall be closed to all hunting at all times.

History: **En. Sec. 1, Ch. 115, L. 1971; R.C.M. 1947, 26-1128.**

Part 5

Stream Protection

87-5-501. State policy. It is hereby declared to be the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved.

History: **En. Sec. 1, Ch. 10, L. 1965; R.C.M. 1947, 26-1501.**

87-5-502. Notice of construction or hydraulic projects. An agency of state government, county, municipality, or other subdivision of the state of Montana, hereafter called applicant, shall not construct, modify, operate, maintain, or fail to maintain any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction without first causing notice of such planned construction to be served upon the department on forms furnished by the department as soon as preliminary plans are completed but not less than 60 days prior to commencement of final plans for construction. Such notice shall include detailed plans and specifications of so much of said project as may or will affect any such stream in any manner specified above.

History: **En. Sec. 2, Ch. 10, L. 1965; amd. Sec. 1, Ch. 133, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1502.**

87-5-503. Investigation of construction plans. The department shall promptly examine and investigate all such plans. Should the department determine the plans and specifications furnished with any such application technically insufficient, the department shall so notify the applicant and may render aid in preparing adequate plans and specifications.

History: **En. Sec. 3, Ch. 10, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1503.**

87-5-504. Notice of department findings and alternative plans. Within 30 days after the receipt of such plans, the department shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the department notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect.

History: En. Sec. 4, Ch. 10, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1504.

87-5-505. Arbitration of disputes. (1) If the department notifies the applicant that the construction will adversely affect fish or game habitat, the applicant, within 15 days after receiving the recommendations and alternatives of the department, shall notify the department if it refuses to modify its plans in accordance with the recommendations or alternatives. In the event of refusal, the disagreement shall be arbitrated as provided in subsection (2) of this section.

(2) (a) Upon receipt of a notice of refusal, the department shall determine if it wants the disagreement arbitrated. Within 10 days after an affirmative determination and after notice to the applicant, the department shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within 5 days of receipt of notification, the judges shall appoint three people from the county or counties in which the project is located to an arbitration committee. Within 10 days after the committee is appointed, it shall meet, hear testimony from all the parties concerned, and issue a decision signed by at least two members of the committee. The decision shall be binding on all parties concerned.

(b) Travel expenses of the arbitrators shall be allowed as in 2-18-501 through 2-18-503, as amended, and shall be divided equally among the agencies involved.

History: En. Sec. 5, Ch. 10, L. 1965; amd. Sec. 2, Ch. 133, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 5, Ch. 453, L. 1977; R.C.M. 1947, 26-1505.

87-5-506. Vested water rights preserved and emergency actions excepted. This part shall not operate or be so construed as to impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States or operate in emergencies such as floods, ice jams, or other conditions causing emergency handling.

History: En. Sec. 6, Ch. 10, L. 1965; R.C.M. 1947, 26-1506.

87-5-507. Irrigation projects excepted. This part shall not apply to any irrigation district project or any other irrigation system.

History: En. Sec. 7, Ch. 10, L. 1965; amd. Sec. 3, Ch. 133, L. 1971; R.C.M. 1947, 26-1507.

87-5-508. Federal actions injuring fish and wildlife. The department shall observe acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will, or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such information, the department shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. The department shall keep complete files and records, available for public inspection, of all matters and things done and all communications and correspondence sent and received pursuant to this section.

History: **En. Sec. 4, Ch. 133, L. 1971; amd. Sec. 11, Ch. 417, L. 1977; R.C.M. 1947, 26-1508.**

87-5-509. Penalty and restoration. (1) An agency, under 87-5-502, violating provisions of this part shall be assessed a fine of not less than $100 or more than $500 for each day of continuing violation but not more than a total of $1,000.

(2) In addition, at the discretion of the court, the agency shall restore the damaged stream to its prior condition. Employees of an agency acting in the ordinary course of their employment under directions of a superior are not liable for violations under this section.

(3) The department may institute and maintain in the name of the state enforcement proceedings under this section. All fines assessed under this section shall be deposited in the earmarked revenue fund for the use of the department.

History: **En. 26-1509 by Sec. 1, Ch. 339, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1509.**

TITLES 88 AND 89

RESERVED

TITLE 90

PLANNING, RESEARCH, AND DEVELOPMENT

Ch.
1. Development Coordination.
2. Renewable Resource Development.
Chapter 3 reserved.
4. Energy Development and Conservation.
5. Secondary Industry and Commercial Development.
6. Community Impact — Planning and Abatement.

CHAPTER 1

DEVELOPMENT COORDINATION

Part 1 — Planning and Economic Development

Section
90-1-101. Declaration of necessity and public policy.
90-1-102. Functions of department of community affairs — state planning.
90-1-103. Functions of department of community affairs — community development.
90-1-104. Functions of department of community affairs — recreational development.
90-1-105. Functions of department of community affairs — economic development.
90-1-106. Functions of the department of community affairs — housing.
90-1-107. Contracts and agreements for projects and programs — cooperation with other agencies.
90-1-108. County land planning assistance.

Part 1

Planning and Economic Development

90-1-101. Declaration of necessity and public policy. (1) It is hereby declared to be a necessity and the public policy of the state to promote, stimulate, and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor, and natural resources of the state require that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification of industry and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state, and the attainment of a proper balance in the overall economic base are all necessary in order to create additional employment opportunities, increase personal income, and promote the general welfare of the people of this state.

(2) The department of community affairs shall be regarded as performing a governmental function in carrying out the provisions of this part.

History: En. Sec. 2, Ch. 19, L. 1967; amd. Sec. 82, Ch. 348, L. 1974; amd. Sec. 43, Ch. 213, L. 1975; R.C.M. 1947, 82-3702.

90-1-102. Functions of department of community affairs — state planning. The department of community affairs shall:

(1) develop and adopt a comprehensive plan for the physical development of the state;

(2) make economic and social studies needed to accomplish the purposes of this part;

(3) coordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana;

(4) assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the development of new and existing economic enterprises, including taxes and the regulation of industry;

(5) provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development which may be relieved by state action;

(6) locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance and make recommendations for protecting and preserving those sites;

(7) apply for, accept, and administer grants from the federal government or other public or private sources to accomplish the objectives of this part and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states;

(8) serve as the consultative, coordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services, and technical aid, which may include land use, demographic, and economic studies and surveys and comprehensive plans.

History: En. Sec. 5, Ch. 19, L. 1967; amd. Sec. 83, Ch. 348, L. 1974; amd. Sec. 44, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.

90-1-103. Functions of department of community affairs — community development. The department of community affairs shall:

(1) cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and coordinated development of the communities of the state;

(2) assist the governor in coordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans;

(3) serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(4) carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

History: En. 82-3705.1 by Sec. 84, Ch. 348, L. 1974; amd. Sec. 45, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.1.

90-1-104. Functions of department of community affairs — recreational development. The department of community affairs shall:

(1) exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities;

(2) assemble and correlate information which may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public.

History: En. 82-3705.2 by Sec. 85, Ch. 348, L. 1974; amd. Sec. 46, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.2.

90-1-105. Functions of department of community affairs — economic development. The department of community affairs shall:

(1) provide coordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises;

(4) aid communities interested in obtaining new business or expanding existing business;

(5) study and promote means of expanding markets for Montana products;

(6) encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state.

History: En. 82-3705.3 by Sec. 86, Ch. 348, L. 1974; amd. Sec. 47, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.3.

90-1-106. Functions of the department of community affairs — housing. The department may:

(1) survey and investigate housing needs throughout the state and publish the results and make recommendations to the governor and the legislature as

to legislation and other measures necessary, desirable, or advisable to alleviate housing problems;

(2) maintain and disseminate information on available governmental housing assistance programs, eligibility and development requirements, and other similar information; and

(3) promote research and development in housing planning design, production, conservation, rehabilitation, and other matters relating to, or affecting the provision of decent, safe, and sanitary housing in a suitable living environment.

History: En. 35-526 by Sec. 27, Ch. 461, L. 1975; amd. Sec. 3, Ch. 163, L. 1977; R.C.M. 1947, 35-526.

90-1-107. Contracts and agreements for projects and programs — cooperation with other agencies. (1) The department of community affairs may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to accomplish its own research programs. It may perform research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies shall provide the department with information which will assist it in carrying out this part.

(2) The department shall assist and cooperate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials in carrying out the functions and duties of the department.

(3) It may consult with private groups and individuals, and if the department considers it desirable, hold public hearings to obtain information for the purposes of carrying out this part.

History: En. Sec. 6, Ch. 19, L. 1967; amd. Sec. 87, Ch. 348, L. 1974; R.C.M. 1947, 82-3706.

90-1-108. County land planning assistance. (1) The department of community affairs shall annually distribute the funds appropriated to it from the county land planning account. Each county shall be allotted $3,000. After this disbursement has been made, 40% of the balance in the account shall be apportioned to the counties according to the ratio of each county's land area to the total land area of the state and 60% of the balance shall be apportioned to the counties according to each county's portion of the total population of the state. If a multijurisdictional planning board has been established in the county, it may receive and expend part or all of the funds allocated to that county.

(2) Counties, cities, or joint planning boards receiving funds under this section shall use such funds for land planning purposes.

(3) At the end of each fiscal year, every local governing body and planning agency receiving funds under this section shall provide an accounting of how the money was spent, in a form acceptable to the department of community affairs. Any surplus funds shall revert to the education trust fund account.

History: En. 82-3710 by Sec. 14, Ch. 502, L. 1975; amd. Sec. 4, Ch. 540, L. 1977; R.C.M. 1947, 82-3710; amd. Sec. 1, Ch. 51, L. 1979.

CHAPTER 2

RENEWABLE RESOURCE DEVELOPMENT

Part 1 — Renewable Resource Development Loans, Grants, and Bonds

Section
90-2-101. Policy and purpose.
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90-2-103. Constraints on developments generally.
90-2-104. Department to solicit views.
90-2-105. Repealed. Sec. 5, Ch. 51, L. 1979.
90-2-106. Repealed. Sec. 5, Ch. 51, L. 1979.
90-2-107. State and local renewable resource development loans.
90-2-108. Terms of loans.
90-2-109. Effect of loan — lien.
90-2-110. Administration of loans.
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90-2-112. Bond proceeds not for grants.
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90-2-121. Issuing bonds.
90-2-122. Refunding bonds.
90-2-123. Sinking fund account.
90-2-124. Appropriation of coal severance tax.
90-2-125. Clearance fund account.
90-2-126. Costs and expenditures.
90-2-127. Authorization of bonds.
90-2-128. Penalty.

Part 1

Renewable Resource Development Loans, Grants, and Bonds

90-2-101. Policy and purpose. (1) In the development of the natural resources of the state, it is essential to distinguish between those which are and those which are not renewable; to make proper charges through taxation and otherwise for the depreciation of nonrenewable resources; and to invest a proper proportion of the tax and other revenues from nonrenewable resources in the replacement thereof with developments of renewable natural resources that will preserve for the citizens the benefit of the state's natural heritage and to ensure that the quality of existing public resources such as land, air, water, fish, wildlife, and recreational opportunities are not significantly diminished by developments supported by this part.

(2) In order to finance such developments, it is necessary to borrow in anticipation of the receipt of the revenues so that replacement will not lag behind consumption. The purpose of this part is to provide a procedure for borrowing in the most economical way for this purpose, to authorize the creation of debt to finance the first stage of the program, and to describe the types of projects, loans, and grants to be included in the program.

History: En. 89-3601 by Sec. 1, Ch. 533, L 1975; R.C.M. 1945; 89-3601.

90-2-102. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Renewable resource development program" means such developments in the public interest of renewable natural resources of the state as shall from time to time be acquired, constructed, and financed from funds appropriated to the accounts referred to in this section and from the proceeds of bonds issued in anticipation of the receipt of these funds.

(2) "Renewable resource development bonds" means all series of bonds authorized by law to be issued pursuant to 90-2-121 to finance any part of the renewable resource development program or to refund any such bonds.

(3) "Renewable resource development account" or "clearance fund account" means a separate account which is created within the bond and insurance clearance fund established in 17-2-102 and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the renewable resource development program, upon order of the board of natural resources and conservation under authority and within limitations provided by law.

(4) "Renewable resource development bond account" or "sinking fund account" means a separate account which is created within the sinking fund established in 17-2-102 and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only as provided for herein.

(5) "Treasurer" means the state treasurer.

History: En. 89-3602 by Sec. 2, Ch. 533, L. 1975; amd. Sec. 1, Ch. 323, L. 1977; R.C.M. 1947, 89-3602(part).

90-2-103. Constraints on developments generally. Renewable resource developments shall, whenever practicable, be multiple-use projects and shall not significantly diminish the quality of existing public resources such as land, air, water, fish, wildlife, and recreational opportunities.

History: En. 89-3602 by Sec. 2, Ch. 533, L. 1975; amd. Sec. 1, Ch. 323, L. 1977; R.C.M. 1947, 89-3602(part).

90-2-104. Department to solicit views. The department of natural resources and conservation shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, and other subdivisions of state and federal government and of other interested and affected persons.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(2).

90-2-105. Repealed. Sec. 5, Ch. 51, L. 1979.

90-2-106. Repealed. Sec. 5, Ch. 51, L. 1979.

90-2-107. State and local renewable resource development loans. (1) The department of natural resources and conservation may recommend to the governor that loans be made from the renewable resource development account established by this part to any department, agency, board, commission, or other division of state government or to any city, county, or other political subdivision or local government body of the state.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards,

agencies, and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those loan proposals having his approval to the legislature by the 20th day of any legislative session. Those loan proposals approved by the legislature shall be administered by the department.

(4) The provisions of 90-2-104, 90-2-108, 90-2-109, and 90-2-128 shall govern and apply to the local renewable resource loans herein provided for.

(5) Both the loans provided for by this section and the grants provided for by 90-2-111 may be submitted to the governor and approved by the legislature as may be necessary to jointly finance any project.

History: En. 89-3605 by Sec. 5, Ch. 533, L. 1975; amd. Sec. 3, Ch. 323, L. 1977; R.C.M. 1947, 89-3605.

90-2-108. Terms of loans. (1) The board of natural resources and conservation shall make no renewable resource development loan which exceeds the lesser of $100,000 or 80% of the fair market value of the security given therefor. In determining the fair market value for the security given for any loan, the department of natural resources and conservation shall consider appraisals made by qualified appraisers and such other factors it considers important.

(2) The period for repayment of loans pursuant to this part may not exceed 30 years.

(3) The board shall from time to time establish by rule the interest rate at which loans may be made under this part, provided that in no case may the rate be greater than one percentage point greater than the prevailing interest rate on the renewable resource development bonds provided for in this part.

(4) The board may adopt rules as required to govern the terms and conditions for making loans, security instruments, and agreements pursuant to this part.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(4) thru (6), (8).

90-2-109. Effect of loan — lien. The state shall have a lien upon a project constructed with money from the renewable resource development account for the amount of the loan, together with the interest thereon. This lien may attach to all project facilities, equipment, easements, real property, and property of any kind or nature owned by the debtor, including all water rights. The board shall file either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the project with the county recorder of each county in which the project or any part thereof is located. The county recorder shall record the lien in a book kept for the recording of liens and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(7).

90-2-110. Administration of loans. The department of natural resources and conservation shall administer the loans made by the board pursuant to this part and may accept and utilize voluntary and uncompensated services and, with the consent of the agency concerned, utilize the officers, employees, equipment, and information of any agency of the federal government or of any agency of Montana government or of any political subdivision within Montana.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(10).

90-2-111. Grants to divisions of state government. (1) The department of natural resources and conservation may recommend to the governor that grants from the renewable resource development account provided for by this part be made to any department, agency, board, commission, or other division of state government.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those grant proposals having his approval to the legislature by the 20th day of any legislative session. Those grant proposals approved by the legislature shall be administered by the department.

(4) The grants provided for by this section may be made for the purchase, lease, or construction of projects for the conservation, management, utilization, development, or preservation of the land, water, fish, wildlife, recreational, and other renewable resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, or modification of existing projects; and for such other and further similar purposes as the legislature may approve.

(5) The department may adopt rules as required to govern the terms and conditions for making grants pursuant to this section.

History: En. 89-3604 by Sec. 4, Ch. 533, L. 1975; amd. Sec. 2, Ch. 323, L. 1977; R.C.M. 1947, 89-3604(part).

90-2-112. Bond proceeds not for grants. Unless specifically authorized by the legislature, no bond proceeds may be used for the purpose of making grants. Grants may be made only from such sums as are deposited in the sinking fund account from the collection of the coal severance tax as provided in 90-2-124.

History: En. 89-3604 by Sec. 4, Ch. 533, L. 1975; amd. Sec. 2, Ch. 323, L. 1977; R.C.M. 1947, 89-3604(part); amd. Sec. 2, Ch. 51, L. 1979.

90-2-113 through 90-2-120 reserved.

90-2-121. Issuing bonds. (1) Within the limits authorized by 90-2-127 and within the further limitations in this section, the board of examiners may issue and sell bonds of the state in such manner as it considers necessary and proper to finance the renewable resource development program. The full faith and credit and taxing powers of the state shall be pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of such bonds shall be issued by the board of examiners upon request of the board of natural resources and conservation in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes

in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the sinking fund account will in the judgment of the board be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All proceeds of bonds issued hereunder, other than refunding bonds, shall be deposited in the clearance fund account, except that any principal and accrued interest received in repayment of the loans provided for in this part shall be deposited in the sinking fund account. All proceeds of refunding bonds shall be deposited in the sinking fund account and applied to the payment and redemption of outstanding bonds issued hereunder as directed by the board, whether at maturity or on any previous date on which they may be prepaid according to their terms.

History: En. 89-3606 by Sec. 6, Ch. 533, L. 1975; amd. Sec. 4, Ch. 323, L. 1977; R.C.M. 1947, 89-3606(1) thru (5).

90-2-122. Refunding bonds. (1) The board of examiners is authorized to issue refunding bonds at such times and in such amounts, if any, as may be necessary to pay principal or interest due which cannot be paid from funds then on hand in the sinking fund account. It may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of extending the maturities thereof so far as determined by the board to be necessary to assure that the funds then pledged to the sinking fund account will be sufficient for payment of principal and interest due in subsequent years. It may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable thereon.

(2) No refunding bonds may be issued and sold more than 3 months before all bonds refunded thereby mature or are called for redemption unless

the proceeds thereof, with any other funds in the sinking fund account which are needed and available for the purpose, or securities purchased from such proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(3) No new debt may be created by the issuance of refunding bonds in accordance with this section, but such refunding bonds shall evidence the debt previously created and shall be secured by the pledge of the full faith and credit and taxing powers of the state and by the further provisions of this part in the same manner as the bonds refunded thereby.

History: En. 89-3606 by Sec. 6, Ch. 533, L. 1975; amd. Sec. 4, Ch. 323, L. 1977; R.C.M. 1947, 89-3606(6) thru (8).

90-2-123. Sinking fund account. (1) The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the sinking fund account any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the sinking fund account, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that account, and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the sinking fund account shall be used first to pay interest, principal, and redemption premiums when due and payable with respect to renewable resource development bonds; second to accumulate a reserve for the further security of such payments, to the amount required each month to meet those payments due within 12 months thereafter; and third to restore the reserve to this amount after each payment.

(3) After the reserve provided for in subsection (2) above is in the sinking fund, money at any time received in the sinking fund in excess of that amount shall be transferred by the treasurer to the clearance fund account. If the balance at any time on hand in the sinking fund is not sufficient for compliance with subsection (2) and is not restored to the required amount within 3 months thereafter from funds specifically pledged and appropriated to the sinking fund account, the treasurer shall transfer thereto from the general fund an amount sufficient to restore the required balance.

History: En. 89-3607 by Sec. 7, Ch. 533, L. 1975; amd. Sec. 8, Ch. 540, L. 1977; R.C.M. 1947, 89-3607(1) thru (3).

90-2-124. Appropriation of coal severance tax. The state pledges and appropriates and directs to be credited to the sinking fund account, as received, 2 ½% of all money from time to time received from the collection of the severance tax and remaining after allocation of such tax to the trust fund established under section 5, Article IX, of the Montana constitution and such additional amount thereof, if any, as may be required from time to time to provide sufficient funds for the purposes stated in 90-2-123(2), provided that no more than 2 ½% of such tax collections shall be deemed to be pledged for the purpose of 90-2-121(3).

History: En. 89-3607 by Sec. 7, Ch. 533, L. 1975; amd. Sec. 8, Ch. 540, L. 1977; R.C.M. 1947, 89-3607(4).

90-2-125. Clearance fund account. The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the clearance fund account any tax, charge, fee, rental, or other income from any source.

History: En. 89-3608 by Sec. 8, Ch. 533, L. 1975; amd. Sec. 5, Ch. 323, L. 1977; R.C.M. 1947, 89-3608(1).

90-2-126. Costs and expenditures. (1) The costs of the board of examiners, the board of natural resources and conservation, and the department of natural resources and conservation incurred in the administration of this part shall be met from the clearance fund account moneys which shall from time to time as needed be transferred to an earmarked revenue fund established for that purpose.

(2) The board of examiners and the department of natural resources may, within the limits of appropriation made therefore, make necessary expenditures for the purchase or hire of such personnel, facilities, and services as they may from time to time find necessary for the proper administration of this part.

History: En. 89-3608 by Sec. 8, Ch. 533, L. 1975; amd. Sec. 5, Ch. 323, L. 1977; R.C.M. 1947, 89-3608(3), (4).

90-2-127. Authorization of bonds. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $5 million and the issuance and sale of renewable resource development bonds in this amount for the purpose of providing funds appropriated to the clearance fund account for developments included in the renewable resource development program.

History: En. 89-3609 by Sec. 9, Ch. 533, L. 1975; R.C.M. 1947, 89-3609.

90-2-128. Penalty. No member, officer, attorney, or other employee of the board of natural resources and conservation or the department of natural resources and conservation shall, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this part other than such salary, fee, or other compensation as he may receive as such member, officer, attorney, or employee. Any person violating any provision of this section shall upon conviction thereof be punished by a fine of not more than $2,000 or imprisonment for not more than 2 years, or both.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(9).

CHAPTER 3

RESERVED

CHAPTER 4

ENERGY DEVELOPMENT AND CONSERVATION

Part 1 — Renewable Energy Sources Research and Development

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Part 1

Renewable Energy Sources Research and Development

90-4-101. Purpose. The purposes of this part are to stimulate research, development, and demonstration of energy sources which are harmonious with ecological stability by virtue of being renewable, thereby to lessen that reliance on nonrenewable energy sources which conflicts with the goal of long-range ecological stability and to provide for the funding and administration of such research.

History: En. 84-7407 by Sec. 1, Ch. 501, L. 1975; R.C.M. 1947, 84-7407; amd. Sec. 1, Ch. 624, L. 1979.

90-4-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Person" means a natural person, corporation, partnership, or other business entity, association, trust, foundation, any educational or scientific institution, or any governmental unit.

(3) "Department" means the Montana department of natural resources and conservation.

History: En. 84-7408 by Sec. 2, Ch. 501, L. 1975; R.C.M. 1947, 84-7408.

90-4-103. Alternative energy research development and demonstration account established. There is within the earmarked revenue fund an alternative energy research development and demonstration account. Moneys are paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account upon order of the department.

History: En. 84-7409 by Sec. 3, Ch. 501, L. 1975; R.C.M. 1947, 84-7409.

90-4-104. General powers of department. The department may:

(1) employ a staff adequate to administer this part;

(2) retain professional consultants and advisors;

(3) adopt rules governing applications and granting of funds;

(4) consider applications for grants and award grants, subject to the availability of funds and to the appropriation of such funds by the legislature from the alternative energy research development and demonstration funds for projects that will further the purposes of this part;

(5) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy matters. The appointment of any such advisory committee shall be in keeping with 2-15-122.

History: En. 84-7410 by Sec. 5, Ch. 501, L. 1975; R.C.M. 1947, 84-7410.

90-4-105. Applications for grants. Any person may apply for a grant to enable him to research, develop, or demonstrate alternative renewable energy sources. The department shall prescribe the form for applications. Applicants shall describe the nature of their proposed investigations, including practical applications of the possible results and time requirements.

History: En. 84-7411 by Sec. 6, Ch. 501, L. 1975; R.C.M. 1947, 84-7411.

90-4-106. Criteria for grant awards. The department may award grants to applicants under 90-4-105 in accordance with the following criteria:

(1) A grant may cover a period not exceeding 1 year, and the department may not commit itself to spending funds anticipated to be available more than 1 year after the grant period begins. The department may give an applicant a statement of intent to renew its support of his work, subject to the availability of funds and such other conditions as the department may express.

(2) The department may give preference to projects which are also supported by grants from the federal government or other persons provided the grants are consistent with the other objectives of the department. The purpose of this preference is to use the alternative energy research development and demonstration account for matching moneys in order to support more substantial research.

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the department from awarding grants to existing educational institutions.

(4) The department may give preference to research centers which make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources in their homes, plants, places of business, and small communities.

(5) All information resulting from such research shall be made available to the public and shall not become the private property of or under the exclusive control of any one company or person.

(6) The department is under no requirement to expend or commit available alternative energy research, development, and demonstration funds when in its judgment such expenditures or commitments would be unproductive.

History: **En. 84-7412 by Sec. 7, Ch. 501, L. 1975; R.C.M. 1947, 84-7412.**

90-4-107. Biennial report. The department shall report its expenditures and other activities under this part to the legislature at the beginning of each regular legislative session.

History: **En. 84-7413 by Sec. 8, Ch. 501, L 1975; R.C.M. 1935, 84-7413.**

Part 2

Home Weatherization Programs

90-4-201. Weatherization moneys consolidated. All federal funds and grants available and becoming eligible to Montana under the provisions of the community services administration's emergency energy conservation program, the federal energy administration's low-income weatherization assistance program, and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are appropriated to the department of community affairs.

History: **En. 35-601 by Sec. 2, Ch. 583, L. 1977; R.C.M. 1947, 35-601.**

90-4-202. Allocation formula. (1) The department of community affairs may use not more than 5% of the total weatherization funds for administration of the weatherization program.

(2) Each of the governor's substate planning districts shall receive that fraction of the remaining money as the number of eligible households in the district bears to the total number of eligible households in the state.

(3) The department of community affairs may transfer weatherization money among the governor's substate planning districts if it finds that the money is not being expended in accordance with the terms of the agreements executed to carry out the provisions and purposes of this section and federal laws and regulations.

(4) Each of the governor's substate planning districts shall submit plans and proposed agreements to the units of local government in the district for review and comment before the agreements are approved by the department of community affairs.

History: En. 35-602 by Sec. 3, Ch. 583, L. 1977; R.C.M. 1947, 35-602; amd. Sec. 1, Ch. 521, L. 1979.

90-4-203. Annual allocation. State and federal weatherization funds shall be allocated to local weatherization programs on an annual basis.

History: En. 35-603 by Sec. 4, Ch. 583, L. 1977; R.C.M. 1947, 35-603.

Part 3

Energy Supply Emergency Powers

90-4-301. Legislative findings and intent. (1) The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to gather information, formulate plans, and institute appropriate emergency measures to reduce or allocate the usage of energy through a program of mandatory usage curtailment or allocation, a severe impact on the health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of the effects of such energy shortages or disruptions is necessary for preservation of the public health and welfare of the citizens of this state.

(2) It is the intent of this part to:

(a) establish necessary planning, information gathering, and energy emergency powers for the governor and define the conditions under which such powers are to be exercised;

(b) provide penalties for violations of this part.

History: En. Sec. 1, Ch. 473, L. 1979.

Compiler's Comments

Severability. Sec. 20, Ch. 473, L. 1979, is a severability clause.

Period of effectiveness. Sec. 21, Ch. 473, L. 1979, provided: "This act is effective on passage and approval and remains in effect until July 1, 1985." Approved April 9, 1979.

90-4-302. Definitions. As used in this part, the following definitions apply:

(1) "Energy facility" means a facility which produces, extracts, converts, transports, or stores energy.

(2) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(4) "Committee" means the energy policy committee established in 90-4-303.

(5) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency or cooperative which engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(6) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy which will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users.

(7) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis which foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions.

History: **En. Sec. 2, Ch. 473, L. 1979.**

90-4-303. Energy policy committee. There is established a legislative energy policy committee which consists of eight members. The members shall consist of the president of the senate and the floor leader of the opposite party in the senate and the speaker and minority leader of the house of representatives. Each leadership member shall designate one additional member within 15 days following the close of each session.

History: **En. Sec. 3, Ch. 473, L. 1979.**

90-4-304. Supply of vital public services during an energy supply alert and energy emergency. The governor shall, with the advice of the committee, in developing provisions for the allocation, conservation, and consumption of energy, give due consideration to supplying vital public services such as essential governmental operations, health and safety functions, emergency services, public mass transportation systems, food production and processing facilities, and energy supply facilities during conditions of an energy supply alert or energy emergency. In developing any energy allocation programs, provisions shall be made for the equitable distribution of energy among the geographic areas of the state which are experiencing an energy shortage.

History: **En. Sec. 4, Ch. 473, L. 1979.**

90-4-305. Information obtainable by governor. (1) The governor may obtain information from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state necessary for him, with advice of the committee, to determine the need for energy supply alert and emergency declarations. Such information may include but is not limited to:

(a) sales volumes by customer classifications;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In obtaining information under subsection (1) of this section during a state of energy emergency, the governor may subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and cause the depositions of persons residing within or without Montana to be taken in the manner prescribed for depositions in civil actions in district courts, to obtain information relevant to energy resources that are the subject of the proclaimed emergency or associated disaster.

(3) In obtaining information under this section, the governor shall:

(a) seek to avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for his study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(4) Nothing in this part requires the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(5) The governor shall forward to the committee such information collected under this section as the committee may request and shall advise the committee of the progress of the information gathering process.

History: **En. Sec. 5, Ch. 473, L. 1979.**

90-4-306. Advice of distributors and consumers. The governor shall actively solicit the advice of consumers, through the legislative consumer committee established in 5-15-101, and of distributors throughout the information gathering, planning, and implementation process described in this part.

History: **En. Sec. 6, Ch. 473, L. 1979.**

90-4-307. Submission and approval of curtailment plans. (1) The governor may at any time require a distributor of an energy resource to prepare for his approval a plan for the curtailment of the distribution of that resource in the event of a state of energy emergency. Plans shall be submitted in such form and within such limits as the governor shall specify and shall recognize the obligations and duties which may be placed upon distributors subject to this part by other jurisdictions, both state and federal.

(2) Approval of plans for curtailment shall be based on the following factors:

(a) the consistency of the plan with the public health, safety, and welfare;

(b) the technical feasibility of implementation of the plan;

(c) the effectiveness with which the plan minimizes the impact of any curtailment;

(d) the needs of commercial, agricultural, retail, professional, and service establishments whose normal function is to supply goods or services, or both, of an essential nature, including but not limited to food, lodging, fuel, and medical care facilities;

(e) the regional agreements or contracts of the distributors; and

(f) the advice of the committee.

History: En. Sec. 7, Ch. 473, L. 1979.

90-4-308. Governor's considerations. In determining whether to declare an energy supply alert or energy emergency, the governor shall consider:

(1) availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) availability of short-term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of such declaration and the implementation of any curtailment or conservation plans;

(5) the advice of the committee; and

(6) any other relevant factors.

History: En. Sec. 8, Ch. 473, L. 1979.

90-4-309. Energy supply alert. (1) The governor may upon finding that an energy alert condition exists, declare the same for a period of not longer than 90 days, setting forth the reasons therefor. Such declaration may be renewed for 90-day periods thereafter upon a finding that the energy alert condition will continue for such further period.

(2) Whenever the governor has declared an energy supply alert, he may by executive order direct actions:

(a) reducing energy resource usage by state agencies and political subdivisions;

(b) promoting conservation, prevention of waste and salvage of energy resources and the materials, services, and facilities derived therefrom or dependent thereon, by state agencies and political subdivisions.

History: En. Sec. 9, Ch. 473, L. 1979.

90-4-310. Energy emergency — powers of governor. In addition to his existing powers and duties, the governor shall have the following duties and special energy emergency powers subject to the definitions and limitations in this part:

(1) The governor with the advice of the committee may, upon finding that a situation exists which threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers further enumerated in this section shall become effective.

(2) The condition of energy emergency terminates after 14 consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may, with the advice of the committee:

(a) implement such programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy; provided that in so doing, the governor shall impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency;

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) Nothing in this part means that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this part has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this part, all actions authorized or required hereunder or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act of 1971, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, nothing in this part exempts a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor, or unless impossibility of compliance is a direct result of an order of the governor.

History: En. Sec. 10, Ch. 473, L. 1979.

90-4-311. Obligations of state and local executives. To protect the public welfare during conditions of energy alerts or emergencies, the chief executive of each political subdivision of the state, including local governments with self-government power, and each state agency shall carry out in its jurisdiction such energy supply alert or energy emergency measures as may be ordered by the governor.

History: En. Sec. 11, Ch. 473, L. 1979.

90-4-312. Coordination with federal provisions. In order to attain uniformity, as far as is practicable throughout the country in measures taken to aid in energy crisis management, all action taken under this part and all orders and rules made pursuant to it shall be taken or made with due consideration for and consistent when practicable with the orders, rules, actions, recommendations, and requests of federal authorities.

History: En. Sec. 12, Ch. 473, L. 1979.

90-4-313. Compliance. Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor with the advice of committee to comply with an order issued or action taken pursuant to this part shall comply.

History: En. Sec. 13, Ch. 473, L. 1979.

90-4-314. Orders to distributors. The governor may order any distributor to take such action on his behalf as may be required to implement orders issued pursuant to 90-4-310 and no distributor or person is liable for actions taken in accordance with such order.

History: **En. Sec. 14, Ch. 473, L. 1979.**

90-4-315. Liability. No distributor or person is liable for damages to persons or property resulting from action taken in accordance with orders or rules issued pursuant to this part or actions taken pursuant to orders, rules, actions, recommendations, and requests of federal authorities.

History: **En. Sec. 15, Ch. 473, L. 1979.**

90-4-316. Rules and executive orders. Notwithstanding the exemption from the provisions of the Montana Administrative Procedure Act granted to the governor in Title 2, chapter 4, MCA, the governor may adopt rules necessary to implement this part and cause their adoption and publication to be completed in the same manner as the adoption and publication of agency rules. In addition, executive orders of the governor implementing provisions of this part shall be published in the Montana Administrative Register upon request of the governor.

History: **En. Sec. 16, Ch. 473, L. 1979.**

90-4-317. Disaster and emergency laws supplemented. The powers vested in the governor under this part are in addition to and not in lieu of emergency powers vested in him under Title 10, chapter 3, or any other law of Montana.

History: **En. Sec. 17, Ch. 473, L. 1979.**

90-4-318. Governor may authorize expenditure. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an energy emergency is declared by the governor and justifies the expenditure as set forth in 10-3-311 for other emergency or disaster expenditures.

History: **En. Sec. 18, Ch. 473, L. 1979.**

90-4-319. Penalties. A person convicted of violating this part is guilty of a misdemeanor. Each day of violation, after notice of violation, constitutes a separate offense.

History: **En. Sec. 19, Ch. 473, L. 1979.**

CHAPTER 5

SECONDARY INDUSTRY AND COMMERCIAL DEVELOPMENT

Part 1 — Industrial Development Projects

Section

90-5-101. Definition of terms.
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90-5-113. Advice and information by department of community affairs.

Part 2 — Western Interstate Nuclear Compact

90-5-201. Western interstate nuclear compact adopted — text.
90-5-202. Board member appointed by governor — compensation.
90-5-203. Bylaws and amendments filed with secretary of state.

Part 1

Industrial Development Projects

90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(3) "Mortgage" means a mortgage or deed of trust or other security device.

(4) "Municipality" means any incorporated city or town in the state.

(5) "Project" means any land; any building or other improvement; and any other real or personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; and any combination of these projects.

History: En. Sec. 1, Ch. 51, L. 1965; amd. Sec. 1, Ch. 50, L. 1969; amd. Sec. 1, Ch. 386, L. 1971; amd. Sec. 1, Ch. 234, L. 1975; amd. Sec. 1, Ch. 374, L. 1975; R.C.M. 1947, 11-4101; amd. Sec. 1, Ch. 656, L. 1979.

90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county may:

(a) acquire, by construction, purchase, devise, gift, or lease or any combination of such methods, one or more projects located within this state. The projects may be located within, without, or partially within and partially without the municipality or county.

(b) lease to others any or all of its projects for such rentals and upon such terms and conditions, consistent with the provisions of this part, as the governing body considers advisable;

(c) enter into agreements, upon terms the governing body considers advisable and not in conflict with the provisions of this part, to loan the proceeds of its revenue bonds to others for the purpose of defraying the cost of acquiring or improving any project;

(d) issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and secure the payment of such bonds as provided in this part. The revenue bonds may be issued in two or more series or issues where considered advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of the bonds, priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are considered necessary and are not in conflict with the provisions of this part; and

(e) sell and convey any real or personal property acquired as provided by subsection (1)(a) of this section and make any order respecting it as may be conducive to the best interest of the municipality or county, provided that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

(2) No municipality or county may operate any project financed by the sale of revenue bonds as a business or in any manner except as the lessor thereof. No municipality or county may acquire any such project or any part thereof by condemnation.

History: **En. Sec. 2, Ch. 51, L. 1965; R.C.M. 1947, 11-4102; amd. Sec. 3, Ch. 51, L. 1979; amd. Sec. 2, Ch. 656, L. 1979.**

Compiler's Comments

Composite section. This section was amended by Ch. 51 and Ch. 656, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 51 was a Code Commissioner bill and was not intended to make substantive changes in the law. Therefore, a conflict of language in subsection (2) between Ch. 51 and Ch. 656 has been resolved in favor of the language in Ch. 656.

90-5-103. Limited obligation bonds — form and contents — sale — negotiability. (1) All bonds issued by a municipality or county under the authority of this part shall be limited obligations of the municipality or county. Bonds and interest coupons issued under the authority of this part shall not constitute or give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds.

(2) The bonds referred to in subsection (1) of this section may be executed and delivered at any time and from time to time, be in such form and denominations, be of such tenor, be in registered or bearer form either as to principal or interest or both, be payable in such installments and at such time or times not exceeding 30 years from their date, be payable at such place or places, bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, be redeemable prior to maturity, with or without premium, and contain such provisions not inconsistent herewith as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this part may be sold at public or private sale in such manner, at such time or times, and at such price above or below par as may be agreed upon by the lessee of the project or the borrower of the funds. The municipality or county may pay all expenses, premiums, and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale, and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the projects.

(4) All bonds issued under the authority of this part and all interest coupons applicable thereto shall be construed to be negotiable instruments despite the fact that they are payable solely from a specified source.

History: En. Sec. 3, Ch. 51, L. 1965; amd. Sec. 1, Ch. 304, L. 1974; R.C.M. 1947, 11-4103(1) thru (4); amd. Sec. 3, Ch. 656, L. 1979.

90-5-104. Hearing. Prior to the issuance of any bonds under the authority of this part by any municipality or county, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for 3 consecutive weeks prior to the date set for the hearing, the governing body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing, the general nature of the project, the name of the lessee or borrower, and the estimated cost of the project. The governing body may not issue the bonds unless it appears after the public hearing that the acquisition or improvement of the project is in the public interest of the municipality or county.

History: En. Sec. 3, Ch. 51, L. 1965; amd. Sec. 1, Ch. 304, L. 1974; R.C.M. 1947, 11-4103(5); amd. Sec. 4, Ch. 656, L. 1979.

90-5-105. Provisions for security of bondholders. (1) The payment of the principal of and interest on any bonds issued under the authority of this part shall be secured by a pledge of the revenues out of which such bonds shall be made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the project;

(b) a pledge of the lease or loan agreement relating to such project; or

(c) such other security device as may be deemed most advantageous by the issuing authority.

(3) (a) The proceedings under which the bonds are authorized to be issued under the provisions of this part and any mortgage given to secure the same, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this part, including, without limiting the generality of the foregoing, provisions respecting the:

(i) fixing and collection of rents or payments under any lease or loan agreement concerning the project covered by such proceedings or mortgage;

(ii) terms to be incorporated in the lease or loan agreement;

(iii) maintenance and insurance of such project;

(iv) creation and maintenance of special funds from the revenues of such project; and

(v) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(b) In making any such agreements or provisions, a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(4) The proceedings authorizing any bonds under the provisions of this part and any mortgage, including a mortgage given by the lessee or borrower, securing such bonds may provide that in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(5) Any mortgage made by the municipality or county or by the lessee or borrower to secure these bonds may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

History: En. Sec. 4, Ch. 51, L. 1965; R.C.M. 1947, 11-4104; amd. Sec. 5, Ch. 656, L. 1979.

90-5-106. Determination of costs — terms of lease. (1) Prior to the leasing of any project or entering into a loan agreement concerning a project, the governing body must determine and find the following:

(a) the amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project;

(b) the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and

(c) the estimated cost of maintaining the project in good repair and keeping it properly insured, unless the terms of the lease or loan agreement provide that the lessee or borrower shall maintain the project and carry all proper insurance with respect thereto.

(2) The determinations and findings of the governing body required to be made by subsection (1) shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of any bonds authorized by this part, the municipality or county shall lease the project to a lessee or lessees or enter into a loan agreement with a borrower under a lease or loan agreement conditioned upon completion of the project by the lessees or borrowers and providing for payment to the municipality or county of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient to:

(a) pay the principal of and interest on the bonds issued to finance the project;

(b) pay the taxes on the project;

(c) build up and maintain any reserves deemed by the governing body to be advisable in connection therewith; and

(d) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the lease or loan agreement obligates the lessees or borrowers to pay for the maintenance and insurance of the project.

(3) Subject to the limitations of this part, the lease, loan agreement, or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties and, notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, an option may be granted to a lessee to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

History: **En. Sec. 5, Ch. 51, L. 1965; R.C.M. 1947, 11-4105; amd. Sec. 6, Ch. 656, L. 1979.**

90-5-107. Refunding of bonds. (1) Any bonds issued under the provisions of this part and at any time outstanding may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith. An issue of refunding bonds may be combined with an issue of additional revenue bonds on any project when the combined total meets the requirements of 90-5-106(1).

(2) Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby. The holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of this part shall be subject to the provisions contained in 90-5-103 and 90-5-104 and may be secured in accordance with the provisions of 90-5-105.

History: **En. Sec. 6, Ch. 51, L. 1965; R.C.M. 1947, 11-4106.**

90-5-108. Use of proceeds of bond sales. (1) The proceeds from the sale of any bonds issued under authority of this part shall be applied only for the purpose for which the bonds were issued or to discharge any existing indebtedness secured by a lien against a hospital or long-term care facility leased or owned by a nonprofit corporation. However, if the project is not a hospital or long-term care facility leased or owned by a nonprofit corporation, the proceeds from the sale of bonds may not be used to discharge indebtedness without an improvement to the project.

(2) Any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds.

History: En. Sec. 7, Ch. 51, L. 1965; amd. Sec. 2, Ch. 234, L. 1975; R.C.M. 1947, 11-4107(part); amd. Sec. 7, Ch. 656, L. 1979.

90-5-109. Cost of projects. The cost of acquiring or improving any project shall be deemed to include the following:

(1) the actual cost of acquiring or improving real estate for any project;

(2) the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees;

(3) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(4) bond reserves and premiums for insurance of lease rentals pledged to pay the bonds; and

(5) the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding 6 months after completion of construction.

History: En. Sec. 7, Ch. 51, L. 1965; amd. Sec. 2, Ch. 234, L. 1975; R.C.M. 1947, 11-4107(part).

90-5-110. Taxation of projects. (1) Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in any year, but such projects shall not be subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in any year.

(2) Where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by distress warrant for collection of such delinquent taxes may only be made on personal property against which such taxes were levied.

History: En. Sec. 8, Ch. 51, L. 1965; R.C.M. 1947, 11-4108.

90-5-111. Powers cumulative. Neither this part nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state but shall be construed as cumulative.

History: En. Sec. 9, Ch. 51, L. 1965; R.C.M. 1947, 11-4109.

90-5-112. Economic development levy. (1) Upon an affirmative vote of a majority of the qualified voters voting in a city, county, or town on the question of whether the governing body may levy a tax for economic development, the governing body of that city, county, or town is authorized to levy in any one election up to 1 mill upon the taxable value of all the property in the county, city, or town subject to taxation for the purpose of economic development for a period not to exceed 5 years.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

History: **En. 11-4111 by Sec. 1, Ch. 311, L. 1975; amd. Sec. 32, Ch. 566, L. 1977; R.C.M. 1947, 11-4111.**

90-5-113. Advice and information by department of community affairs. The department of community affairs shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

History: **En. Sec. 10, Ch. 51, L. 1965; amd. Sec. 56, Ch. 348, L. 1974; amd. Sec. 21, Ch. 213, L. 1975; R.C.M. 1947, 11-4110.**

Part 2

Western Interstate Nuclear Compact

90-5-201. Western interstate nuclear compact adopted — text. The Western Interstate Nuclear Compact is entered into and adopted as follows:

WESTERN INTERSTATE NUCLEAR COMPACT

Article I. Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities, and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

Article II. The Board

(1) There is hereby created an agency of the party states to be known as the "western interstate nuclear board", hereinafter called the board. The

board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(2) The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(3) The board shall have a seal.

(4) The board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(5) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel, or other merit system laws of any of the party states.

(6) The board may establish and maintain, independently or in conjunction with any one or more of the party states or their institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm, or corporation.

(8) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount, and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (7) of this article, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the board.

(9) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(10) The board shall adopt bylaws and rules for the conduct of its business and shall have the power to amend and rescind these bylaws and rules. The board shall publish its bylaws and rules in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(11) The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

Article III. Finances

(1) The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(2) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(3) The board may meet any of its obligations in whole or in part with funds available to it under Article II, paragraph (8) of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article II, paragraph (8) hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(4) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(5) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become a part of the annual report of the board.

(6) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board and duly designated representatives of governments contributing to the board's support.

Article IV. Advisory Committees

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state, and federal government and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

Article V. Powers

The board shall have power to:

(1) encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields;

(2) ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies;

(3) encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, byproducts, and all other appropriate adaptations of scientific and technological advances and discoveries;

(4) collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology;

(5) encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy;

(6) conduct or cooperate in conducting programs of training for state and local personnel engaged in any aspects of:

(a) nuclear industry, medicine, or education, or the promotion or regulation thereof;

(b) applying nuclear scientific advances or discoveries and any industrial commercial or other processes resulting therefrom;

(c) the formulation or administration of measures designed to promote safety in any matter related to the development, use, or disposal of nuclear energy, materials, products, byproducts, installations, or wastes, or to safety in the production, use, and disposal of any other substances peculiarly related thereto;

(7) organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological, or industrial fields to which this compact relates;

(8) undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the west;

(9) study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields;

(10) recommend such changes in or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(11) consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, byproducts, wastes, and

any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis;

(12) consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields;

(13) advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields;

(14) cooperate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest;

(15) act as licensee, contractor, or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact;

(16) prepare, publish, and distribute, with or without charge, such reports, bulletins, newsletters, or other materials as it deems appropriate;

(17) ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact. Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto. Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states. The plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances. From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(18) prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact;

(19) undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful in connection with the fields covered by this compact.

Article VI. Mutual Aid

(1) Whenever a party state or any state or local governmental authorities therein request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(2) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges, and immunities as comparable officers and employees of the state to which they are rendering aid.

(3) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.

(4) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid shall be assumed and borne by the requesting state.

(5) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid and for the cost of all materials, transportation, wages, salaries, and maintenance of officers, employees, and equipment incurred in connection with such requests; provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(6) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

Article VII. Supplementary Agreements

(1) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes, its duration, and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project, and such other matters

as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(2) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(3) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(4) The provisions to this article shall apply to supplementary agreements and activities thereunder but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

Article VIII. Other Laws and Relations

Nothing in this compact shall be construed to:

(1) permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order, or ordinance of a party state or subdivision thereof now or hereafter made, enacted, or in force;

(2) limit, diminish, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency, or officer pursuant to and in conformity with any valid and operative act of congress or limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor;

(3) alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions;

(4) permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

Article IX. Eligible Parties, Entry into Force and Withdrawal

(1) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(2) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, provided that it shall not become initially effective until enacted into law by five states.

(3) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 2 years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall effect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(4) Guam and American Samoa or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. Such participation shall not include the furnishing or receipt of mutual aid pursuant to Article VI, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

Article X. Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence, or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

History: **En. Sec. 1, Ch. 258, L. 1973; R.C.M. 1947, 82-4401.**

90-5-202. Board member appointed by governor — compensation. The governor shall appoint the board member. He shall report directly to the governor. The member, with the approval of the governor, may designate an alternate to represent the state when he is unable to do so. The member or his alternate may receive no compensation in addition to salary for his services as a member of the board but shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties.

History: **En. Sec. 2, Ch. 258, L. 1973; amd. Sec. 21, Ch. 453, L. 1977; R.C.M. 1947, 82-4402.**

90-5-203. Bylaws and amendments filed with secretary of state. Pursuant to Article II, paragraph (10), of the compact, the western interstate nuclear board shall file copies of the bylaws and amendments thereto with the secretary of state.

History: **En. Sec. 3, Ch. 258, L. 1973; R.C.M. 1947, 82-4403.**

CHAPTER 6

COMMUNITY IMPACT — PLANNING AND ABATEMENT

Part 1 — Financing of Housing

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Part 1

Financing of Housing

90-6-101. Short title. This part shall be known and may be cited as the "Housing Act of 1975".

History: En. 35-501 by Sec. 1, Ch. 461, L. 1975; R.C.M. 1947, 35-501.

Compiler's Comments

Prior transactions not impaired. Sec. 4, Ch. 143, L. 1979, provided: "Nothing herein shall affect or impair any provision of resolutions, indentures, loans, contracts, bonds, or notes adopted, entered into, or issued before the effective date of this act."

90-6-102. Legislative declaration. The legislature finds and declares that there is a shortage in Montana of decent, safe, and sanitary housing which is within the financial capabilities of lower income persons and families. In order to alleviate the high cost of housing for these persons, the legislature believes that it is essential that additional public moneys be made available through the issuance of revenue bonds to assist both private enterprise and governmental agencies in meeting critical housing needs.

History: **En. 35-502 by Sec. 2, Ch. 461, L. 1975; R.C.M. 1947, 35-502.**

90-6-103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1008.

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this part.

(3) "Capital reserve account" means the capital reserve account provided for in 90-6-107.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality thereof or a commitment by the United States or a governmental agency or instrumentalities thereof to insure such a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality thereof.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more thereof.

(8) "Housing development" means any work or undertaking financed in whole or in part under this part for the primary purpose of acquiring, constructing, or rehabilitating dwelling accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable in connection therewith, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities as the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including but not limited to:

(a) cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition, and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution, and financing of the housing development and the finding of an eligible mortgagee or mortgagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus, and similar facilities related to the real property;

(g) cost of land improvements, including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) costs of other items, including tenant relocation, as the board determines to be reasonable and necessary for the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsors, nonprofit corporations, or other legal entities or any combination thereof that are:

(a) approved by the board;

(b) qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

(c) subject to the rules of the board and other terms and conditions set forth in this part.

(11) "Lending institution" means any public or private entity or governmental agency approved by the board maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this part.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument which shall constitute a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time the mortgage is acquired, which does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest-bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 35, chapter 15, or a nonprofit corporation formed under Title 35, chapter 2, restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary, and whose articles of incorporation provide in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization shall be used exclusively for housing development purposes and no part of the net income or net earnings of the organization shall inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in any transactions therewith, except that the limitations shall apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families with insufficient personal or family income or other financial resources who require assistance under this part, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income, assets, and other financial resources available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families due to age or physical handicaps.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe, and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board.

History: En. 35-503 by Sec. 3, Ch. 461, L. 1975; amd. Sec. 1, Ch. 163, L. 1977; R.C.M. 1947, 35-503; amd. Sec. 1, Ch. 357, L. 1979.

Compiler's Comments

Prior transactions not impaired. Sec. 2, Ch. 357, L. 1979, provided: "Nothing herein affects or impairs any provision of resolutions, indentures, loans, contracts, bonds, or notes adopted, entered into or issued before the effective date of this act."

Effective date. Sec. 3, Ch. 357, L. 1979, provided: "This act is effective on passage and approval." Approved March 28, 1979.

90-6-104. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law shall be deposited in the housing finance account;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of such sale;

(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any

contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means.

History: En. 35-504 by Sec. 5, Ch. 461, L. 1975; R.C.M. 1947, 35-504.

90-6-105. Meetings and acts of the board. (1) All meetings of the board are open to the public.

(2) All official acts of the board shall be in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board shall be in accordance with the Montana Administrative Procedure Act.

History: En. 35-525 by Sec. 26, Ch. 461, L. 1975; R.C.M. 1947, 35-525.

90-6-106. Adoption of rules. (1) The board shall adopt rules respecting the regulation of borrowers, the admission of occupants in housing developments, the construction of ancillary facilities, and requirements or restrictions necessary to implement this part.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of housing sponsors and eligible recipients;

(b) approval, standards, and regulation of lending institutions under this part;

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and security purchase programs;

(d) assessment and collection of fees and charges in connection with its technical, consultative, and project assistance activities;

(e) determination and regulation of mortgagor and lending institution and their use of funds under this part, sponsor and mortgagor equity definitions and limitations, and housing development costs;

(f) percentage of housing units or housing developments assisted under this part that are reserved for lower income persons and families and which allows for an economic mixture of residents.

History: En. 35-505 by Sec. 6, Ch. 461, L. 1975; R.C.M. 1947, 35-505(2), (3).

90-6-107. Accounts of the board. (1) There is a housing finance account in the bonds proceeds and insurance clearance fund provided for in 17-2-102(6). All funds from the proceeds of bonds issued under this part, fees, and other moneys received by the board, moneys appropriated by the legislature for the use of the board in carrying out this part, and moneys made available from any other source for the use of the board shall be deposited in the housing finance account except where otherwise provided by law and except as necessary to maintain the capital reserve and revolving accounts. All funds deposited in the housing finance account are continuously appropriated to and may be expended by the board for the purposes authorized in this part.

(2) There is a capital reserve account in the sinking fund provided for in 17-2-102(3). The capital reserve account consists of the aggregate of moneys retained by the board under existing agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond issue sold by the board.

(3) There is a revolving account in the revolving fund provided for in 17-2-102(7). Funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part shall be deposited in the revolving account. Funds expended by the board under this subsection shall be repaid by the board into the revolving account from the fees and charges collected under this part and from any other moneys available for such repayment in accordance with this part.

History: En. 35-523 by Sec. 24, Ch. 461, L. 1975; R.C.M. 1947, 35-523.

90-6-108. Financing programs of the board. The board may:

(1) make loans to lending institutions under terms and conditions adopted by the board requiring the proceeds to be used by the lending institution for the making of mortgage loans for housing developments in the state for persons and families of lower income;

(2) invest in, purchase or make commitments to purchase, and take assignments from lending institutions of notes, mortgages, and other securities evidencing loans for the construction, rehabilitation, purchase, leasing, or refinancing of housing developments for persons and families of lower income in this state, under terms and conditions adopted by the board;

(3) make, undertake commitments to make, and participate in the making of mortgage loans, including federally insured mortgage loans, and make temporary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the construction or rehabilitation of housing developments designed and planned for occupancy by persons and families of lower income in this state, under terms and conditions adopted by the board;

(4) make, undertake commitments to make, and participate in the making of loans to persons and families of lower income for housing development under terms and conditions adopted by the board, including without limitation persons and families of lower income who are eligible or potentially eligible for federally insured loans, federal mortgages, or other federal housing assistance, when the board determines that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(5) require that loans made to or securities issued by lending institutions shall be additionally secured as to payment of principal and interest by a pledge of and a lien upon collateral security in amounts and consisting of obligations and securities as the board determines necessary to assure prompt payment of loans and interest. Collateral may be required to be lodged with a bank or trust company designated by the board as custodian, or the board may enter into an agreement with the lending institution requiring it to identify and maintain and service the collateral and the income therefrom solely in accordance with the agreement. A copy of each agreement and any revisions or supplements thereto shall be filed with the secretary of state, and no further filing or other action under the Uniform Commercial Code or any other law shall be required to perfect the security interest of the board in the collateral or in any additions or substitutions. The lien and trust is binding from the time it is made against all parties having claims of any kind in tort, contract, or otherwise against the lending institution.

History: En. 35-505 by Sec. 6, Ch. 461, L. 1975; R.C.M. 1947, 35-505(1), (4).

90-6-109. Procedure prior to financing of housing developments. The board may finance housing developments under this part only when the board finds that:

(1) there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons and families of lower income can afford within the general housing market area to be served by the proposed housing development;

(2) private enterprise has not provided an adequate supply of decent, safe, and sanitary housing in the housing market area at rentals or prices which persons or families of lower income can afford or provided sufficient mortgage financing for housing developments for occupancy by persons or families of lower income;

(3) the housing sponsor undertaking the proposed housing development in this state will supply well planned, well designed housing, and such sponsors are financially responsible;

(4) the housing development to be assisted under this part will be of public use and will provide a public benefit, taking into account the existence of local government comprehensive plans, housing and land use plans and regulations, areawide plans, and other public desires;

(5) the housing development does not involve the construction of second homes (for purposes of this paragraph, "second home" means a home which would not qualify as the primary residence of the taxpayer for federal income tax purposes relating to capital gains on the sale or exchange of residential property); and

(6) as to direct loans it is necessary to qualify for federal funds.

History: En. 35-506 by Sec. 7, Ch. 461, L. 1975; R.C.M. 1947, 35-506.

90-6-110. Supervision of housing sponsors. (1) The board may supervise housing sponsors of housing developments financed under this part as follows:

(a) prescribe uniform systems of accounts and records for housing sponsors and require them to make reports and give answers to specific questions on forms and at times specified by the board;

(b) enter upon and inspect the housing development and examine all books and records of the housing sponsor with respect to capitalization, income, and other matters as specified by the board;

(c) supervise the operation and maintenance of any housing development and order repairs necessary to protect the public and the board's interest or the health, welfare, or safety of the occupants;

(d) determine standards for and control resident selection by a housing sponsor;

(e) require any housing sponsor to pay to the board fees as it prescribes in connection with the examination, inspection, supervision, auditing, or other regulation of the housing sponsor;

(f) order any housing sponsor to do or to refrain from doing things necessary to comply with the provisions of law, the rules of the board, and the terms of any contract or agreement to which the housing sponsor is a party;

(g) regulate the retirement of any capital investment or the redemption of stock where any such retirement or redemption when added to any dividend or other distribution shall exceed in any one fiscal year 10% or a lesser amount of the original face amount of any investment or equity of any housing sponsor, as determined by the board; and

(h) adopt rules specifying the categories of cost which shall be allowable in the construction or rehabilitation of a housing development.

(2) The board shall require any housing sponsor to certify the actual housing development costs prior to periodic payments or upon completion of the housing development, subject to audit and determination by the board. The board may accept, in lieu of any certification of housing development costs, other assurances of the housing development costs, in any form or manner whatsoever, as will enable the board to determine with reasonable accuracy the amount of housing development costs.

History: En. 35-507 by Sec. 8, Ch. 461, L. 1975; R.C.M. 1947, 35-507.

90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, shall bear a date and shall mature at times as the resolutions provide. A note

shall not mature more than 10 years and a bond shall not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate, or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

(5) The total amount of notes and bonds outstanding at any one time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed $375 million. The rate of interest on bonds or notes issued by the board may not exceed 9% per annum.

History: En. 35-508 by Sec. 9, Ch. 461, L. 1975; R.C.M. 1947, 35-508; amd. Sec. 1, Ch. 518, L. 1979; amd. Sec. 1, Ch. 522, L. 1979.

Compiler's Comments

Saving clause. Sec. 2, Ch. 518, L. 1979, provided: "Nothing in [section 1] affects or impairs any provision of resolution indentures, loans, contracts, bonds, or notes adopted, entered into, or issued before [the effective date of this act]."

Effective dates. Sec. 3, Ch. 518, L. 1979, provided: "This act is effective on its passage and approval." Approved April 9, 1979. Sec. 3, Ch. 522, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

Prior transactions not impaired. Sec. 2, Ch. 522, L. 1979, provided: "Nothing herein affects or impairs any provision of resolutions, indentures, loans, contracts, bonds, or notes adopted, entered into, or issued before the effective date of this act."

90-6-112. Provision of bond resolutions. A resolution authorizing any notes or bonds, or any issue thereof, may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including mortgages and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from mortgages owned by the board and payment of principal of mortgages owned by the board;

(4) the setting aside of reserves of sinking funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of

notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) a commitment to employ adequate and competent personnel at such reasonable compensation, salaries, fees, and charges as may be determined by the board in conjunction with the department of administration and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee property, rights, powers, and duties in trust as the board determines;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies shall not be inconsistent with the laws of the state and the other provisions of this part; and

(11) any other matters of like or different character which in any way affect the security or protection of the holders of the notes or bonds.

History: En. 35-509 by Sec. 10, Ch. 461, L. 1975; R.C.M. 1947, 35-509; amd. Sec. 1, Ch. 143, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 143, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

90-6-113. Validity of pledge. Any pledge made by the board shall be valid and binding from the time the pledge is made. The revenues, moneys, or property pledged and thereafter received by the board shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: En. 35-510 by Sec. 11, Ch. 461, L. 1975; R.C.M. 1947, 35-510.

90-6-114. Personal liability. The board members and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

History: En. 35-511 by Sec. 12, Ch. 461, L. 1975; R.C.M. 1947, 35-511.

90-6-115. Purchase of notes and bonds — cancellation. The board, subject to existing agreements with noteholders or bondholders, may, out of any funds available for that reason, purchase notes or bonds of the board, which shall thereupon be cancelled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment thereon, if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase upon which the notes or bonds become subject to redemption plus accrued interest to that date, if the notes or bonds are not then redeemable.

History: En. 35-512 by Sec. 13, Ch. 461, L. 1975; R.C.M. 1947, 35-512.

90-6-116. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders which are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenditures of the board.

History: En. 35-513 by Sec. 14, Ch. 461, L. 1975; R.C.M. 1947, 35-513; amd. Sec. 4, Ch. 51, L. 1979.

90-6-117. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

History: En. 35-514 by Sec. 15, Ch. 461, L. 1975; R.C.M. 1947, 35-514.

90-6-118. Signatures of board members. In case any of the board members whose signatures appear on notes or bonds or coupons cease to be members before the delivery of the notes or bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the members had remained in office until delivery.

History: En. 35-515 by Sec. 16, Ch. 461, L. 1975; R.C.M. 1947, 35-515.

90-6-119. Reserve funds and appropriations. (1) The board shall pay into the capital reserve account:

(a) any funds appropriated and made available by the state for the purpose of the account;

(b) any proceeds of sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) any other funds which may be available to the board for the purpose of the account from any other source.

(2) All funds held in the capital reserve account shall be used solely for the payment of the principal of bonds secured in whole or in part by the account or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account shall not be withdrawn at any time in an amount which reduces the amount of the account to less than the sum of minimum capital reserve requirements established for the account, except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and sinking fund payments for the payment of which other moneys pledged are not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to the extent it does not reduce

the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

(3) The board may not issue bonds secured in whole or in part by the capital reserve account unless the board deposits in the account from the proceeds of the bonds issued or from any other sources an amount not less than the minimum capital reserve requirement for these bonds. For the purposes of this section, the term "minimum capital reserve requirement" means, as of any particular date of computation, an amount of money, as provided in the resolution or indenture of the board authorizing the bonds or notes, equal to not more than the greatest of the respective amounts for the current or any future fiscal year of the board of annual debt service on the bonds of the board secured in whole or in part by the account. The annual debt service for any fiscal year is the amount of money equal to the aggregate of all interest and principal payable on the bonds during the fiscal year, calculated on the assumption that all the bonds are paid at maturity. If any amount of the bonds is required to be redeemed on an earlier date by the operation of a sinking fund, then that amount is considered payable on those bonds during the year they are to be redeemed for the purposes of this calculation.

(4) In computing the amount of the capital reserve account, securities in which all or a portion of the account shall be invested shall be valued at par or, if purchased at less than par, at their cost to the board.

History: En. 35-516 by Sec. 17, Ch. 461, L. 1975; R.C.M. 1947, 35-516.

90-6-120. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall on or before September 1 in the year preceding the convening of the legislature deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirements. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board by the legislature under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, shall be repaid to the state's general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

History: En. 35-517 by Sec. 18, Ch. 461, L. 1975; R.C.M. 1947, 35-517.

90-6-121. Refunding obligations — issuance. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding which have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the appropriate provisions of this part which relate to the issuance of obligations.

History: **En. 35-518 by Sec. 19, Ch. 461, L. 1975; R.C.M. 1947, 35-518.**

90-6-122. Refunding obligations — sale. Refunding obligations issued as provided in 90-6-121 may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: **En. 35-519 by Sec. 20, Ch. 461, L. 1975; R.C.M. 1947, 35-519.**

90-6-123. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a debt or liability or obligation or a pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part shall contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: **En. 35-520 by Sec. 21, Ch. 461, L. 1975; R.C.M. 1947, 35-520.**

90-6-124. Annual audit. (1) There shall be an audit of the board's books and records at least once each fiscal year.

(2) The legislative auditor may conduct an audit at the request of the legislative audit committee.

History: **En. 35-521 by Sec. 22, Ch. 461, L. 1975; R.C.M. 1947, 35-521.**

90-6-125. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part or by local housing authorities under Title 7, chapter 15, parts 21, 44, and 45, their transfer, and their income (including any profits made on their sale) shall be free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: **En. 35-522 by Sec. 23, Ch. 461, L. 1975; R.C.M. 1947, 35-522.**

90-6-126. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: **En. 35-524 by Sec. 25, Ch. 461, L. 1975; R.C.M. 1947, 35-524; amd. Sec. 2, Ch. 143, L. 1979.**

Compiler's Comments

Effective date. Sec. 5, Ch. 143, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

Part 2

Coal Impacts — Evaluation and Abatement Funding

90-6-201. Purpose. The purposes of this part are to assist local governmental units which have been required to expand the provision of public services as a consequence of large-scale development of coal mines and coal-using energy complexes, to assist in the construction and reconstruction of designated portions of highways which serve the area affected by such large-scale development, to support county land planning, and to invest a portion of the tax revenue from coal mines in a permanent fund, the income from which shall be used for the support of public schools throughout the state.

History: **En. 50-1701 by Sec. 1, Ch. 502, L. 1975; R.C.M. 1947, 50-1801.**

90-6-202. Accounts established. (1) There is within the earmarked revenue fund a local impact and education trust fund account. Moneys are payable into this account under 15-35-108. The state treasurer shall draw warrants from this account upon order of the coal board.

(2) There is within the earmarked revenue fund a coal area highway improvement account.

History: **En. 50-1702 by Sec. 2, Ch. 502, L. 1975; R.C.M. 1947, 50-1802.**

90-6-203. Definition of coal board. "Board" means the coal board provided for in 2-15-1104.

History: **En. 90-6-203 by Code Commissioner, 1979.**

90-6-204. Chairman, meetings, compensation, and facilities. (1) The board shall elect a chairman from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the chairman or a majority of the members.

(3) Members are entitled to compensation as provided for in 2-15-124(7).

(4) The department of community affairs will provide suitable office facilities and the necessary staff for the coal board.

History: **En. 50-1705, 50-1708 by Secs. 6, 9, Ch. 502, L. 1975; R.C.M. 1947, 50-1805, 50-1808.**

90-6-205. Coal board — general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account; and

(4) award grants, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund account, to local governmental units and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does

not include interest income from the account reinvested in the account in trust for the public schools and the university system.

History: En. 50-1706 by Sec. 7, Ch. 502, L. 1975; amd. Sec. 3, Ch. 540, L. 1977; R.C.M. 1947, 50-1806(part).

90-6-206. Basis for awarding grants. (1) Such grants shall be awarded on the basis of:

(a) need;

(b) degree of severity of impact from the coal development;

(c) availability of funds; and

(d) degree of local effort in meeting these needs.

(2) In determining the degree of local effort, the board shall review the millage rates levied for the present fiscal year in relation to the average millage rates levied during the 3 years immediately preceding coal development in that area or 1970, whichever is later, which impacts the local government unit applying for assistance.

(3) Millage rates for the present fiscal year which are lower than the average millage rate levied during the 3 years immediately preceding coal development in that area or 1970, whichever is later, shall be deemed by the board to indicate the lack of local effort. The application under such circumstances may be rejected.

(4) Further, in determining the degree of local effort, the board shall consider the possibility of requiring that local government unit to increase its bonded indebtedness to provide all or part of the governmental service or facility which is needed as a direct consequence of coal development.

(5) To the extent funds are needed to evaluate and plan for the impact needs caused by coal development, consideration of bond issues and millage levies may be waived.

(6) To the extent the applicant has no history of mill levies, subsections (2) and (3) do not apply.

History: En. 50-1706 by Sec. 7, Ch. 502, L. 1975; amd. Sec. 3, Ch. 540, L. 1977; R.C.M. 1947, 50-1806(part); amd. Sec. 1, Ch. 619, L. 1979.

90-6-207. Priorities for impact grants. (1) The department of community affairs shall designate counties, towns, school districts, and other governmental units which have had or expect to have an increase in estimated population of at least 10% during any 3 years since 1972 as a result of the impact of coal development. The coal board shall, subject to the appropriations of the legislature, award at least 50% of all grants awarded to governmental units and state agencies for meeting the needs caused by coal development each year to these designated governmental units.

(2) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(3) All funds placed in the local impact and educational trust fund account established under this part, subject to the limitations imposed by 90-6-211, shall be subject to appropriations by the legislature for use related to local impact or for transfer to a permanent trust for education.

History: En. 50-1707 by Sec. 8, Ch. 502, L. 1975; R.C.M. 1947, 50-1807.

90-6-208. Applications for grants. The governing body of a city, town, county, or school district or any other local or state governmental unit or agency may apply for a grant to enable it to provide governmental services which are needed as a direct consequence of coal development. The coal board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved.

History: **En. 50-1709 by Sec. 10, Ch. 502, L. 1975; R.C.M. 1947, 50-1809(part).**

90-6-209. Limitations on grants. The board may commit itself to the expenditure of funds for more than 1 year for a single project, as long as the grant does not extend over more than 10 years and does not exceed reasonable revenue expectations. No state agency may receive grants which exceed 5% of the money allocated to the board.

History: **En. 50-1709 by Sec. 10, Ch. 502, L. 1975; R.C.M. 1947, 50-1809(part).**

90-6-210. Coal area highway reconstruction program. (1) The department of highways, within the area designated as the eastern Montana coal field economic growth center as certified to the secretary of transportation by the governor under section 143, Title 23, United States Code, shall prepare a special construction program for the reconstruction of deficient sections of these highways.

(2) The department of highways shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this subsection and any federal funds that may be made available to match such funds. Until federal funds are made available to match the funds allocated under this subsection, the department of highways may, upon approval of the Montana state highway commission, expend such funds for planning and reconstruction projects with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes.

(3) Funds allocated under this subsection shall not be used to match apportionments made for primary and secondary highways under the Federal-Aid Highway Acts; however, nothing in this subsection should be construed to prohibit the implementation of projects otherwise funded by apportionments made under the Federal-Aid Highway Acts; furthermore, planning and reconstruction projects may be financed in whole or in part by public and private funds provided such projects conform to the applicable standards, regulations, and procedures of the department of highways and the federal highway administration.

History: **En. 50-1703 by Sec. 4, Ch. 502, L. 1975; amd. Sec. 2, Ch. 540, L. 1977; R.C.M. 1947, 50-1803(2) thru (4).**

90-6-211. Disposition of interest from unexpended balance. The unexpended balance in the local impact and education trust fund account shall be invested as provided by statute by the board of investments. Of the income from such investments each year 10% shall be added to the principal of the account to be segregated and held in trust for the purposes of supporting the public schools and university systems of the state. Of the remaining 90% of the income from such investments, three-fourths shall be annually paid into the earmarked revenue fund for state equalization aid to public schools of the state and one-fourth each year shall be paid to the board of regents of higher education for use by the institutions of higher learning in the state, subject to the budgeting authority of the legislature. Except as provided in 90-6-205(4), the principal of the local impact and educational trust fund shall be dedicated to education and forever remain inviolate and sacred to this purpose as provided in sections 3 and 10 of Article X of the Montana constitution.

History: En. 50-1710 by Sec. 11, Ch. 502, L. 1975; R.C.M. 1947, 50-1810.

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